

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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THE WASHINGTON WATER POWER COM-  
PANY, a corporation, THE CITY BANK  
FARMERS TRUST COMPANY, a corpora-  
tion, and RALPH E. MORTON, as Trustee,  
vs. Appellants,

UNITED STATES OF AMERICA,  
And Appellee.

UNITED STATES OF AMERICA,  
vs. Appellant,

THE WASHINGTON WATER POWER COM-  
PANY, a corporation, THE CITY BANK  
FARMERS TRUST COMPANY, a corpora-  
tion, and RALPH E. MORTON, as Trustee,  
Appellees.

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Transcript of Record

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Upon Appeals from the District Court of the United  
States for the Eastern District of Washington,  
Northern Division.

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Upon Appeals from the District Court of the United  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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EDWARD M. CONNELLY,  
United States Attorney  
332 Post Office Building, Spokane, Washington

B. E. STOUTEMYER,  
Bureau of Reclamation  
603 Post Office Building, Portland, Oregon  
Attorneys for Petitioner.

POST, RUSSELL, DAVIS & PAINE,  
Spokane & Eastern Building, Spokane, Wash-  
ington

H. E. T. HERMAN,  
Columbia Building, Spokane, Washington  
Attorneys for Defendant Washington  
Water Power Company et al.

OOSEE W. NOBLE,  
Prosecuting Attorney,  
Republic, Washington  
Attorney for Defendant Ferry County

F. LEO GRINSTEAD,  
Prosecuting Attorney,  
Colville, Washington  
Attorney for Stevens County

In the District Court of the United States for the  
Eastern District of Washington,  
Northern Division

No. 52

UNITED STATES OF AMERICA,  
Petitioner,  
vs.

THE WASHINGTON WATER POWER COMPANY, corporation; ROBERT L. THOMPSON and JANE DOE THOMPSON, his wife; CENTRAL UNION TRUST COMPANY OF NEW YORK, a corporation, Trustee; CENTRAL HANOVER BANK AND TRUST COMPANY, a corporation; FRANK WOLFE, as Trustee; CITY BANK FARMERS TRUST COMPANY, a corporation, RALPH E. MORTON as Trustee; THE FARMERS' LOAN AND TRUST COMPANY, a corporation, as Trustee; CHINOOK LUMBER AND MANUFACTURING COMPANY, a corporation (formerly Hedlund Lumber and Manufacturing Company, a corporation); PAUL W. HARRIS, Trustee in Bankruptcy of the Chinook Lumber and Manufacturing Company, a corporation; FRANK DONLEY and JANE DOE DONLEY, his wife; GEORGE TURNER and JANE DOE TURNER, his wife; and GEORGE TURNER, Trustee; HELEN P. LOOMIS and FRED LOOMIS, her husband; HARLIN I. PEYTON and RUTH A. PEY-



TON, his wife; HORACE C. PEYTON and JANE DOE PEYTON, his wife; VICTOR A. PEYTON and JOHN DOE, her husband; the Unknown Heirs of T. N. Peyton, deceased; L. C. JESSEPH and JANE DOE JESSEPH, his wife; the Unknown Heirs of Gus Carlson deceased; COLUMBIA IRRIGATION DISTRICT, a quasi municipal corporation; ELIZABETH HUMMEL and JOHN DOE, her husband; WESLEY HUMMEL and JANE DOE HUMMEL, his wife; LILLIAN C. HUMMEL and JOHN DOE, her husband; ROSE M. HUMMEL and JOHN DOE, her husband; the Unknown Heirs of Phillip Hummel, deceased; WILLIAM H. REID and JANE DOE REID, his wife; FERRY COUNTY, WASHINGTON; STEVENS COUNTY WASHINGTON; the Unknown Heirs of any of the above-named defendants, if deceased, and ALL OTHER PERSONS, FIRMS or CORPORATIONS, UNKNOWN, having or claiming to have any right, title, estate, lien or interest in or to the land described below or any portion thereof;

Defendants.

### PETITION FOR CONDEMNATION

Comes now the petitioner, United States of America, by the undersigned attorneys acting under and by direction of the Attorney [1\*] General of the

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

United States, and for its cause of action against the above-named defendants alleges:

I.

That the defendant The Washington Water Power Company is a corporation duly organized under the laws of the State of Washington.

II.

That the defendants Robert L. Thompson and Jane Doe Thompson (whose true Christian name is to the petitioner unknown) are husband and wife.

III.

That the defendant Central Union Trust Company of New York, Trustee, is a corporation duly organized under the laws of the State of New York.

IV.

That the defendant Central Hanover Bank and Trust Company is a corporation duly organized under the laws of the State of New York.

V.

That the defendant City Bank Farmers Trust Company is a corporation duly organized under the laws of the State of New York.

VI.

That the defendant The Farmers' Loan and Trust Company is a corporation duly organized under the laws of the State of New York.



VII.

That the defendant Chinook Lumber and Manufacturing Company (formerly Hedlund Lumber and Manufacturing Company) is a corporation duly organized under the laws of the State of Washington; that said corporation has been duly adjudicated bankrupt by the United States District Court for the Eastern District of Washington, Northern Division, and that defendant Paul W. Harris is the duly appointed, qualified and acting trustee in bankruptcy of said corporation. [2]

VIII.

That the defendants Frank Donley and Jane Doe Donley (whose true Christian name is to the petitioner unknown) are husband and wife.

IX.

That the defendants George Turner and Jane Doe Turner (whose true Christian name is to the petitioner unknown) are husband and wife.

X.

That the defendants Helen P. Loomis and Fred Loomis are wife and husband.

XI.

That the defendants Harlin I. Peyton and Ruth A. Peyton are husband and wife.

XII.

That the defendants Horace C. Peyton and Jane Doe Peyton (whose true Christian name is to the petitioner unknown) are husband and wife.

## XIII.

That the defendants Victor A. Peyton and John Doe (whose true Christian name is to the petitioner unknown) are husband and wife.

## XIV.

That the defendants L. C. Jesseph and Jane Doe Jesseph (whose true Christian name is to the petitioner unknown) are husband and wife.

## XV.

That the defendants Elizabeth Hummel and John Doe (whose true Christian name is to the petitioner unknown) are wife and husband.

## XVI.

That the defendants Wesley Hummel and Jane Doe Hummel (whose true Christian name is to the petitioner unknown) are husband and wife. [3]

## XVII.

That the defendants Lillian C. Hummel and John Doe (whose true Christian name is to the petitioner unknown) are wife and husband.

## XVIII.

That the defendants Rose M. Hummel and John Doe (whose true Christian name is to the petitioner unknown) are wife and husband.

## XIX.

That the defendants William H. Reid and Jane Doe Reid (whose true Christian name is to the petitioner unknown) are husband and wife.

XX.

That the defendant Columbia Irrigation District is a quasi municipal corporation organized under the laws of the State of Washington.

XXI.

That the defendant Ferry County, Washington, is a municipal corporation and political subdivision of the State of Washington.

XXII.

That the defendant Stevens County, Washington, is a municipal corporation and political subdivision of the State of Washington.

XXIII.

That pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388) commonly known and referred to as the Reclamation Law, and of the Act of Congress of August 30, 1935 (49 Stat. 1039), which authorized in section 2 thereof the construction of Grand Coulee Dam on the Columbia River for the purpose of improving navigation, controlling floods, regulating the flow of the Columbia River, providing for storage, and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations, and other beneficial uses, and for the generation of electric energy as a means of financing, aiding and assisting such undertaking and incidental works necessary to [4] such project, and by virtue of this authority the Secretary of the Interior of the United States of America has

caused surveys and investigations to be made of the Columbia Basin Project on the Columbia River, a Federal project having for its purpose, among other things:

(a) Improvement of navigation and flood control by storage of flood water at high water stages of the river, and release of stored water at periods of low water;

(b) Irrigation of arid lands including public lands of the United States;

(c) Generation of electric energy as incidental to the other purposes above mentioned for the purpose of aiding in the payment of the cost of the project works;

all in pursuance of the Federal Constitution and Laws of the United States of America.

#### XXIV.

That acting in pursuance of said laws and with the aid of said investigations and surveys, the Secretary of the Interior as such officer has determined upon the construction of Grand Coulee Dam as the initial unit of said project, and the same has been specifically authorized by Congress in the said Act of August 30, 1935 (49 Stat. 1039).

#### XXV.

That in pursuance of the provisions of the said Act of August 30, 1935 (49 Stat. 1039) and the said Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, the Secre-

tary of the Interior as such officer has let contracts for the construction of said Grand Coulee Dam and Reservoir and appurtenant structures and by reason of said acts and the appropriation bills passed by the United States Congress in pursuance thereof, there is available a sum of money to construct said dam and acquire the necessary rights of way, lands and other property needed therefor and in connection therewith and the Secretary of the Interior has authorized such [5] construction and right of way acquisition.

## XXVI.

That the petitioner in good faith intends to construct said dam and reservoir and the same are now in actual course of construction.

## XXVII.

That the hereinafter described land situate in Ferry and Stevens counties in the Eastern District of Washington is necessary for the said reservoir and for the construction of said dam and appurtenant structures, to-wit:

### Tract No. 1

(The Washington Water Power Company  
tract)

The following described property situate in the County of Stevens, State of Washington, to-wit:

Lot one (1) in the northeast quarter (NE<sup>1</sup>/<sub>4</sub>),  
Lot two (2) in the northeast quarter (NE<sup>1</sup>/<sub>4</sub>),



and lot three (3) in the southeast quarter ( $SE\frac{1}{4}$ ) of Section eleven (11), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian (patented under date of July 22, 1896 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus) being islands in the Columbia River, containing 88.85 acres, more or less.

Also, Lot one (1), the north half of Lot two ( $N\frac{1}{2}$  of Lot 2), the north half of the southeast quarter of the northwest quarter ( $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ ) and the northeast quarter of the northwest quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ) of Section twelve (12), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, containing 93.00 acres, more or less.

Also, a tract of land containing 21.14 acres, more or less, being that portion of Lot one (1) and the southwest quarter of the northeast quarter ( $SW\frac{1}{4}NE\frac{1}{4}$ ) of section fourteen (14), and that portion of Lots one (1) and two (2) and the southeast quarter of the southeast quarter ( $SE\frac{1}{4}SE\frac{1}{4}$ ) of Section eleven (11) (patented under date of June 8, 1891 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus), all in Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, lying between the east line of the Columbia River and a line described as follows: Beginning at a point on the west line of the south-

west quarter of the northeast quarter ( $SW\frac{1}{4}$   $NE\frac{1}{4}$ ) of said Section fourteen (14), which point bears North  $02^{\circ}54'10''$  west 1070.85 feet and south  $87^{\circ}57'49''$  West 2630.26 feet from the quarter section corner on east line of said Section Fourteen (14); running thence North  $05^{\circ}35'00''$  East 207.92 feet; thence North  $36^{\circ}13'00''$  East 476.48 feet; thence North  $07^{\circ}55'20''$  East 517.39 feet; thence North  $00^{\circ}01'00''$  East 296.85 feet; thence North  $11^{\circ}31'40''$  [6] East 220.19 feet; to a point on the north line of said Section fourteen (14), which point bears South  $87^{\circ}59'45''$  West 2141.46 feet from the northeast section corner of said section fourteen (14); thence North  $11^{\circ}31'40''$  East 184.15 feet; thence north  $27^{\circ}35'10''$  east 241.46 feet; thence North  $44^{\circ}34'50''$  East 285.64 feet; thence North  $11^{\circ}38'10''$  West 583.14 feet; thence south  $77^{\circ}21'40''$  East 335.03 feet; thence North  $52^{\circ}09'20''$  east 291.35 feet; thence North  $60^{\circ}55'10''$  East 338.99 feet; thence North  $37^{\circ}37'10''$  East 303.06 feet; thence North  $23^{\circ}43'20''$  East 456.88 feet; thence South  $67^{\circ}15'00''$  east 333.86 feet; thence South  $47^{\circ}22'10''$  East 305.19 feet; thence south  $38^{\circ}01'00''$  East 160.95 feet to a point on the east line of said Section eleven (11), which point bears North  $02^{\circ}01'13''$  West 1561.06 feet from the southeast section corner of said Section eleven (11): excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes

known as the Inland Empire Highway).

Also, Lot two (2) of Section fourteen (14), Township thirty-six (36) north, range thirty-seven (37) east, Willamette Meridian, excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway), containing 13.80 acres, more or less.

Also, a tract of land containing 79.43 acres, more or less, being all of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of section twelve (12), and a portion of the southwest quarter of the southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$ ) of section twelve (12) and the Northwest quarter of the Northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), all in Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the north line of the southwest quarter of the southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$  of said Section twelve (12), which point bears north  $02^{\circ}01'13''$  West 1320.00 feet and North  $85^{\circ}30'05''$  East 108.45 feet from the southwest corner of said Section twelve (12); running thence north  $85^{\circ}30'05''$  east 2417.99 feet to the northeast corner of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of said section twelve (12); thence South  $01^{\circ}37'15''$  East 1313.28 feet to the quarter section corner on the south line of said Section twelve (12);



thence south  $85^{\circ}20'21''$  west 1262.15 feet along the south line of said section twelve (12) to the southwest corner of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of said section twelve (12); thence south  $03^{\circ}10'19''$  east 1185.64 feet along the east line of the northwest quarter of the northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) of said Section thirteen (13); thence north  $30^{\circ}16'40''$  West 70.25 feet; thence North  $54^{\circ}17'10''$  West 416.42 feet; thence North  $34^{\circ}18'20''$  West 472.22 feet; thence North  $29^{\circ}05'20''$  West 240.05 feet; thence North  $13^{\circ}13'50''$  East 234.53 feet to a point on the north line of said Section thirteen (13), which point bears North  $85^{\circ}20'21''$  East 622.95 feet from the northwest section corner of said section thirteen (13); thence north  $13^{\circ}13'50''$  east 74.75 feet; thence North  $21^{\circ}36'20''$  west 264.07 feet; thence North  $41^{\circ}24'20''$  West 197.32 feet; thence North  $28^{\circ}20'00''$  West 219.54 feet: [7] thence North  $21^{\circ}36'00''$  West 664.16 feet to the point of beginning.

The following described property situate in the County of Ferry, State of Washington, to-wit:

A tract of land containing 34.09 acres, more or less, being that portion of Lot two (2), Lot five (5) (formerly known as Lot 1) and Lot six (6) (formerly known as Lot 3), of section eleven (11), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, between the west line of the Columbia

River and a line described as follows: Commencing at a point on the south line of Lot six (6) (formerly known as Lot 3) of said Section eleven (11), which point bears south  $02^{\circ}08'00''$  East 1320.68 feet and North  $87^{\circ}56'06''$  East 1977.31 feet from the quarter section corner on the west line of said section eleven (11); running thence North  $05^{\circ}26'30''$  East 493.38 feet; thence North  $23^{\circ}37'40''$  east 511.06 feet; thence south  $44^{\circ}39'00''$  East 309.36 feet; thence north  $03^{\circ}30'50''$  East 255.82 feet; thence North  $10^{\circ}53'10''$  West 376.77 feet; thence north  $01^{\circ}36'10''$  east 250.34 feet; thence North  $38^{\circ}35'00''$  east 371.59 feet; thence south  $04^{\circ}28'10''$  east 608.63 feet; thence north  $12^{\circ}48'20''$  East 461.47 feet; thence North  $02^{\circ}12'10''$  East 375.15 feet; thence North  $63^{\circ}18'10''$  West 269.31 feet; thence North  $01^{\circ}32'00''$  east 628.77 feet; thence North  $08^{\circ}59'50''$  east 619.09 feet; thence North  $27^{\circ}46'00''$  West 217.77 feet; thence South  $81^{\circ}55'20''$  East 228.43 feet; thence North  $32^{\circ}15'00''$  East 383.24 feet; thence North  $56^{\circ}35'40''$  east 64.33 feet to a point on the north line of said section eleven (11), which point bears north  $87^{\circ}44'41''$  east 621.57 feet from the quarter section corner on the north line of said section eleven (11); excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway).

Also that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated October 30, 1928, as set forth in Book 5 of Miscellaneous Deeds, at page 111, of the records of Ferry County, Washington, to erect, construct, reconstruct, and maintain a gaging station together with the necessary steel tower, anchors, cables, guys and appurtenances over, along and across Lot six (6) of section twenty-two (22), Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian;

Also, that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated September 21, 1934, as set forth in Book 5 of Miscellaneous Records, at page 299 of the records of Ferry County, Washington, to erect, construct, reconstruct and maintain a gaging station together with the necessary appurtenances over, along and across Lot three (3) of section twenty-two (22), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian. [8]

### Tract No. 2

#### (Hummel Tract)

Also the following described property situate in the County of Stevens, State of Washington, to-wit:

A tract of land containing 21.27 acres, more or less, lying and being in the southeast quarter

of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the east line of the Southeast Quarter of the Northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13), which point bears North  $86^{\circ}09'57''$  east 2568.16 feet and North  $03^{\circ}38'34''$  West 247.27 feet from the quarter section corner on the west line of said Section thirteen (13); running thence North  $64^{\circ}49'10''$  West 95.80 feet; thence North  $74^{\circ}52'50''$  West 393.47 feet; thence North  $63^{\circ}23'20''$  West 522.80 feet; thence North  $33^{\circ}14'50''$  West 307.77 feet; thence North  $26^{\circ}06'00''$  West 413.09 feet to the point of intersection with the north line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence north  $85^{\circ}45'25''$  East 1197.80 feet to the northeast corner of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence south  $03^{\circ}38'34''$  East 1105.80 feet along the east line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13) to the point of beginning.

## XXVIII.

That the fee simple title to the land herein described as Tract No. 1 stands on the records of Ferry and Stevens Counties, Washington, in the

name of The Washington Water Power Company, a corporation, which company is in possession of the same; that defendants Robert L. Thompson and Jane Doe Thompson, his wife; Central Union Trust Company of New York, a corporation, Trustee; Central Hanover Bank and Trust Company, a corporation, Frank Wolfe as Trustee; City Bank Farmers Trust Company, a corporation; Ralph E. Morton as Trustee; The Farmers' Loan and Trust Company, a corporation, as Trustee; Chinook Lumber and Manufacturing Company, a corporation (formerly Hedlund Lumber and Manufacturing Company, a corporation); Paul W. Harris, Trustee in Bankruptcy of the Chinook Lumber and Manufacturing Company, a corporation; Frank Donley and Jane Doe Donley, his wife; George Turner and Jane Doe Turner, his wife, and George Turner, Trustee; [9] Helen P. Loomis and Fred Loomis, her husband; Harlin I. Peyton and Ruth A. Peyton, his wife; Horace C. Peyton and Jane Doe Peyton, his wife, Victor A. Peyton and John Doe, her husband, and the Unknown Heirs of I. N. Peyton, deceased; L. C. Jesseph and Jane Doe Jesseph, his wife; the Unknown Heirs of Gus Carlson, deceased; Columbia Irrigation District, a quasi municipal corporation; William H. Reid and Jane Doe Reid, his wife; Ferry County, Washington; Stevens County, Washington; the Unknown Heirs of any of the above-named defendants, if deceased; and all other persons, firms, or corporations, unknown, having or claiming to have any right, title, estate, lien



or interest in or to the land described above as Tract No. 1, or any portion thereof, claim some interest therein, the exact nature and amount whereof is unknown to the petitioner.

## XXIX.

That the fee simple title to the land herein described as Tract No. 2 stands on the records of Stevens County, Washington, in the name of Phillip Hummel, who is now deceased; that the defendants Elizabeth Hummel and John Doe, her husband; Wesley Hummel and Jane Doe Hummel, his wife; Lillian C. Hummel and John Doe, her husband; Rose M. Hummel and John Doe, her husband, are the known heirs of Phillip Hummel, deceased; that the Unknown Heirs of Phillip Hummel, deceased; William H. Reid and Jane Doe Reid, his wife; The Washington Water Power Company, a corporation; Central Hanover Bank and Trust Company, a corporation; Frank Wolfe, as Trustee; City Bank Farmers Trust Company, a corporation; Ralph E. Morton, Trustee; The Farmers' Loan and Trust Company, a corporation, Trustee; Helen P. Loomis and Fred Loomis, her husband; Harlin I. Peyton and Ruth A. Peyton, his wife; Horace C. Peyton and Jane Doe Peyton, his wife; Victor A. Peyton and John Doe, her husband, the Unknown Heirs of I. N. Peyton, deceased; Stevens County, Washington; the Unknown Heirs of any of the above-named defendants, if deceased; and all other persons, firms or corporations, unknown,

having or claiming to have any right, title, [10] estate, lien or interest, in or to the land described above as Tract No. 2 or any portion thereof, claim some interest therein, the exact nature and amount whereof is unknown to the petitioner.

### XXX.

That the petitioner has in good faith undertaken to purchase said tracts of land without avail, the petitioner and the defendants being in disagreement as to the market value thereof, and the petitioner does now in good faith continue its offer to purchase said land at a fair market value.

Wherefore, petitioner prays that it be adjudged that the public use requires the condemnation of said land and that this Court proceed to determine the interest of the defendants therein and that title in fee simple be decreed to the petitioner, upon its paying into Court the reasonable value thereof.

SAM M. DRIVER,

United States Attorney.

LYLE KEITH,

Assistant United States  
Attorney.

B. E. STOUTEMYER,

District Counsel, Bureau of  
Reclamation.

HART SNYDER,

Special Attorney, Department  
of Justice,  
Attorneys for Petitioner.

United States of America,  
Eastern District of Washington—ss.

Sam M. Driver, being first duly sworn, upon oath deposes and says: That he is the duly appointed, qualified and acting United States Attorney for the Eastern District of Washington, and as such makes this verification; that he has read the foregoing Petition for Condemnation, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

SAM M. DRIVER

Subscribed and sworn to before me this 9th day of December, 1939.

EVA M. HARDIN,

Deputy Clerk, United States  
District Court for the East-  
ern District of Washington.

(Seal)

[Endorsed]: Filed Dec. 9, 1939. A. A. LaFramboise, Clerk. [11]

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[Title of District Court and Cause.]

#### DECLARATION OF TAKING

I, John W. Finch, Acting Under Secretary of the Interior of the United States of America, acting in such capacity and by virtue of provisions of (a) The Act of Congress of August 30, 1935 (49 Stat., 1039), (b) the Act of Congress of June 17, 1902 (32 Stat., 388) and all acts amendatory thereof



or supplementary thereto, commonly known as the Reclamation Law, and (c) the Act of Congress of February 26, 1931 (46 Stat., 1421), Chapter 307, do hereby make and file this declaration of taking pursuant to the provisions of said Act of February 26, 1931 and declare that the fee simple title to the land described in the petition filed in this cause is hereby taken for the use of the United States and under the authority of and for the purposes set forth in said acts; that the estate in said lands hereby taken for the public use aforesaid is an estate in fee simple absolute; that the total value of said land including all buildings, structures, and improvements thereon is Eight thousand one hundred ninety-one and 70/100.....Dollars (\$8,191.70) which said sum is hereby deposited into the registry of this Honorable Court to the use and for the benefit of the ones entitled thereto, said sum being allocated to the tracts involved as follows:

Tract No. 1 (The Washington Water Power Company tract)—330.31 acres—\$7,950.35

Tract No. 2 (Hummel tract)—21.27 acres—\$241.35

That the following is a description of the lands to which fee simple absolute title is taken under this declaration with the estimated value of the same:

## Tract No. 1

(The Washington Water Power Company  
tract)

The following described property situate in the County of Stevens, State of Washington, to-wit:

Lot one (1) in the northeast quarter ( $NE\frac{1}{4}$ ), Lot two (2) in the northeast [12] quarter ( $NE\frac{1}{4}$ ), and lot three (3) in the southeast quarter ( $SE\frac{1}{4}$ ) of Section eleven (11), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian (patented under date of July 22, 1896 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus) being islands in the Columbia River, containing 88.85 acres, more or less.

Also, Lot one (1), the north half of Lot two ( $N\frac{1}{2}$  of Lot 2), the north half of the southeast quarter of the northwest quarter ( $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ ) and the northeast quarter of the northwest quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ) of Section twelve (12), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, containing 93.00 acres, more or less.

Also, a tract of land containing 21.14 acres, more or less, being that portion of Lot one (1) and the southwest quarter of the northeast quarter ( $SW\frac{1}{4}NE\frac{1}{4}$ ) of section fourteen (14), and that portion of Lots one (1) and two (2) and the southeast quarter of the southeast quar-

ter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section eleven (11) (patented under date of June 8, 1891 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus), all in Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, lying between the east line of the Columbia River and a line described as follows: Beginning at a point on the west line of the southwest quarter of the northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ ) of said Section fourteen (14), which point bears North 02°54'10" west 1070.85 feet and south 87°57'49" West 2630.26 feet from the quarter section corner on east line of said Section Fourteen (14); running thence North 05°35'00" East 207.92 feet; thence North 36°13'00" East 476.48 feet; thence North 07°55'20" East 517.39 feet; thence North 00°01'00" East 296.85 feet; thence North 11°31'40" East 220.19 feet; to a point on the north line of said Section fourteen (14), which point bears South 87°59'45" West 2141.46 feet from the northeast section corner of said section fourteen (14); thence North 11°31'40" East 184.15 feet; thence north 27°35'10" east 241.46 feet; thence North 44°34'50" East 285.64 feet; thence North 11°38'10" West 583.14 feet; thence south 77°21'40" East 335.03 feet; thence North 52°09'20" east 291.35 feet; thence North 60°55'10" East 338.99 feet; thence North 37°37'10" East 303.06 feet; thence North 23°43'20" East 456.88 feet; thence South

67°15'00" east 333.86 feet; thence South 47°22'10" East 305.19 feet; thence south 38°01'00" East 160.95 feet to a point on the east line of said Section eleven (11), which point bears North 02°01'13" West 1561.06 feet from the southeast section corner of said Section eleven (11); excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway).

Also, Lot two (2) of Section fourteen (14), Township thirty-six (36) north, range thirty-seven (37) east, Willamette Meridian, excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway), containing 13.80 acres, more or less.

Also, a tract of land containing 79.43 acres, more or less, being all of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of section twelve (12), and a portion of the southwest quarter of the southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$ ) of section twelve (12) and the Northwest quarter of the Northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), all in Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the north line of the southwest quarter of the southwest quarter

(SW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section twelve (12), which point bears north 02°01'13" West 1320.00 feet and North 85°30'05" East 108.45 feet from the southwest corner of said Section twelve (12); running thence north 85°30'05" east 2417.99 feet to the northeast corner of the southeast quarter of the southwest [13] quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of said section twelve (12); thence South 01°37'15" East 1313.28 feet to the quarter section corner on the south line of said Section twelve (12); thence south 85°20'21" west 1262.15 feet along the south line of said section twelve (12) to the southwest corner of the southeast quarter of the southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of said section twelve (12); thence south 03°10'19" east 1185.64 feet along the east line of the northwest quarter of the northwest quarter (NW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of said Section thirteen (13); thence north 30°16'40" West 70.25 feet; thence North 54°17'10" West 416.42 feet; thence North 34°18'20" West 472.22 feet; thence North 29°05'20" West 240.05 feet; thence North 13°13'50" East 234.53 feet to a point on the north line of said Section thirteen (13), which point bears North 85°20'21" East 622.95 feet from the northwest section corner of said section thirteen (13); thence north 13°13'50" east 74.75 feet; thence North 21°36'20" west 264.07 feet; thence North 41°24'20" West 197.32 feet; thence North 28°20'00" West 219.54 feet; thence North 21°36'00" West 664.17 feet to the point of beginning.



The following described property situate in the County of Ferry, State of Washington, to-wit:

A tract of land containing 34.09 acres, more or less, being that portion of Lot two (2), Lot five (5) (formerly known as Lot 1) and Lot six (6) (formerly known as Lot 3), of section eleven (11), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, between the west line of the Columbia River and a line described as follows: Commencing at a point on the south line of Lot six (6) (formerly known as Lot 3) of said Section eleven (11), which point bears south  $02^{\circ}08'00''$  East 1320.68 feet and North  $87^{\circ}56'06''$  East 1977.31 feet from the quarter section corner on the west line of said section eleven (11); running thence North  $05^{\circ}26'30''$  East 493.38 feet; thence North  $23^{\circ}37'40''$  east 511.06 feet; thence south  $44^{\circ}39'00''$  East 309.36 feet; thence north  $03^{\circ}30'50''$  East 255.82 feet; thence North  $10^{\circ}53'10''$  West 376.77 feet; thence north  $01^{\circ}36'10''$  east 250.34 feet; thence North  $38^{\circ}35'00''$  east 371.59 feet; thence south  $04^{\circ}28'10''$  east 608.63 feet; thence north  $12^{\circ}48'20''$  East 461.47 feet; thence North  $02^{\circ}12'10''$  East 375.15 feet; thence North  $63^{\circ}18'10''$  West 269.31 feet; thence North  $01^{\circ}32'00''$  east 628.77 feet; thence North  $08^{\circ}59'50''$  east 619.09 feet; thence North  $27^{\circ}46'00''$  West 217.77 feet; thence South  $81^{\circ}55'20''$  East 228.43 feet; thence North

32°15'00" East 383.24 feet; thence North 56°35'40" east 64.33 feet to a point on the north line of said section eleven (11), which point bears north 87°44'41" east 621.57 feet from the quarter section corner on the north line of said section eleven (11); excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway).

Also that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated October 30, 1928, as set forth in Book 5 of Miscellaneous Deeds, at page 111, of the records of Ferry County, Washington, to erect, construct, reconstruct, and maintain a gaging station together with the necessary steel tower, anchors, cables, guys and appurtenances over, along and across Lot six (6) of section twenty-two (22), Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian;

Also, that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated September 21, 1934, as set forth in Book 5 of Miscellaneous Records, at page 299 of the records of Ferry County, Washington, to erect, construct, reconstruct and maintain a gaging station together with the necessary appurtenances over, along and across Lot three (3) of section twenty-two (22),

Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian.

Estimated value of the said tract No. 1 being acquired [14] is Seven thousand nine hundred fifty and 35/100 Dollars (\$7,950.35).

Tract No. 2  
(Hummel Tract)

Also the following described property situate in the County of Stevens, State of Washington, to-wit:

A tract of land containing 21.27 acres, more or less, lying and being in the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the east line of the Southeast Quarter of the Northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13), which point bears North  $86^{\circ}09'57''$  east 2568.16 feet and North  $03^{\circ}38'34''$  West 247.27 feet from the quarter section corner on the west line of said Section thirteen (13); running thence North  $64^{\circ}49'10''$  West 95.80 feet; thence North  $74^{\circ}52'50''$  West 393.47 feet; thence North  $63^{\circ}23'20''$  West 522.80 feet; thence North  $33^{\circ}14'50''$  West 307.77 feet; thence North  $26^{\circ}06'00''$  West 413.09 feet to the point of intersection with the north line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}$



NW $\frac{1}{4}$ ) of said section thirteen (13); thence north  $85^{\circ}45'25''$  East 1197.80 feet to the northeast corner of the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said section thirteen (13); thence south  $03^{\circ}38'34''$  East 1105.80 feet along the east line of the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said section thirteen (13) to the point of beginning.

Estimated value of said Tract No. 2 being acquired is Two hundred forty-one and  $\frac{35}{100}$  Dollars (\$241.35).

That said land is taken under the authority of the Constitution and Laws of the United States for the following purposes:

(1) Regulation and control of the flow of the Columbia River a navigable stream of the United States, by means of a dam located at the Grand Coulee site and a storage reservoir above said site for use at said Grand Coulee site and at all the damsites on the Columbia River below said Grand Coulee and all parts of said Columbia River from the Canadian Line to the mouth of said stream for the following purposes:

- (a) Improvement of navigation;
- (b) Flood control;
- (c) Hydro-electric power development at said Grand Coulee site and at each of the proposed damsites below the said Grand Coulee

site as an aid and incident to the other purposes herein enumerated, including the increase of the amount of firm power which may be made available at each of the lower damsites on [15] said stream and the improvement of the feasibility of each of said proposed lower dams on the Columbia River as self-liquidating projects;

(d) Reclamation of arid and semi-arid land, including public land of the United States;

(e) Domestic use of water, including use by entrymen on public lands;

and that by virtue of appropriations made by Congress for the purposes aforesaid, funds are available for just compensation for said land so taken.

In Witness Whereof, I have hereunto set my hand this 15th day of November, 1939, in the City of Washington, District of Columbia.

JOHN W. FINCH,  
Acting Under Secretary of the Interior of the  
United States of America.

[Endorsed]: Filed Dec. 9, 1939. A. A. LaFramboise, Clerk. [16]

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V. 26, 1904 BY  
GENERAL'S  
LYMPIA, WASH.

END—

RESERVIOR BOUNDARIES

10	9	N 12	35	00E	375.15
11	12	N 02	18	10 W	269.31
12	13	N 01	32	00E	628.77
13	14	N 08	59	50E	619.09
14	15	N 27	46	00W	217.77
15	16	S 81	55	20E	228.43
16	17	N 32	15	00E	383.24
17	18	N 56	35	40E	64.33

EAST SIDE

FROM	TO	BEARING			DIST. FEET
		DEG.	MIN.	SEC.	
3	4	N 05	35	00E	207.92
4	5	N 36	13	00E	476.48
5	6	N 07	55	20E	517.39
6	7	N 00	01	00E	296.85
7	8	N 11	31	40E	220.19
8	9	N 11	31	40E	184.15
9	10	N 27	35	10E	241.46
10	11	N 44	34	50E	285.64
11	12	N 11	38	10 W	583.14
12	13	S 77	21	40E	335.03
13	14	N 52	09	20E	291.35
14	15	N 60	55	10E	338.99
15	16	N 37	37	10E	303.06
16	17	N 23	43	20E	456.88
17	18	S 67	15	00E	333.86
18	19	S 47	22	10E	305.19
19	20	S 38	01	00E	160.95
21	22	S 21	36	00E	664.17
22	23	S 28	20	00E	219.54
23	24	S 41	24	20E	197.32
24	25	S 21	36	20E	264.07
25	26	S 13	13	50W	74.75
26	27	S 13	13	50W	234.53
27	28	S 29	05	20E	240.05
28	29	S 34	18	20E	472.22
29	30	S 54	17	10E	416.42
30	31	S 30	16	40E	70.25
32	33	S 26	06	00E	413.09
33	34	S 33	14	50E	307.77
34	35	S 63	23	20E	522.80
35	36	S 74	52	50E	393.47
36	37	S 64	49	10E	95.80



TRACT. NO. 1 TO BE ACQUIRED BY THE UNITED STATES. 330.31 ACRES



TRACT NO. 2 TO BE ACQUIRED BY THE UNITED STATES. 21.27 ACRES

site as an aid and incident to the other purposes herein enumerated, including the increase of the amount of firm power which may be made available at each of the lower damsites on [15] said stream and the improvement of the feasibility of each of said proposed lower dams on the Columbia River as self-liquidating projects;

(d) Reclamation of arid and semi-arid land, including public land of the United States;

(e) Domestic use of water, including use by entrymen on public lands;

and that by virtue of appropriations made by Congress for the purposes aforesaid, funds are available for just compensation for said land so taken.

In Witness Whereof, I have hereunto set my hand this 15th day of November, 1939, in the City of Washington, District of Columbia.

JOHN W. FINCH,

Acting Under Secretary of the Interior of the  
United States of America.

[Endorsed]: Filed Dec. 9, 1939. A. A. LaFramboise, Clerk. [16]

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NGE 37 E W.M.,  
26, 1904 BY  
GERAL'S  
MPIA, WASH.

END—

# RESERVIOR BOUNDARIES

10	11	N 02	18	00E	375.12
11	12	N 03	18	10 W	269.31
12	13	N 04	32	00E	628.77
13	14	N 08	59	50E	619.09
14	15	N 27	46	00W	217.77
15	16	S 81	55	20E	228.43
16	17	N 32	15	00E	363.24
17	18	N 56	35	40E	64.33

## EAST SIDE

FROM	TO	BEARING			DIST. FEET
		DEG.	MIN.	SEC.	
3	4	N 05	35	00E	207.92
4	5	N 36	13	00E	476.48
5	6	N 07	55	20E	517.39
6	7	N 00	01	00E	296.85
7	8	N 11	31	40E	220.19
8	9	N 11	31	40E	184.15
9	10	N 27	35	10E	241.46
10	11	N 44	34	50E	285.64
11	12	N 11	38	10 W	583.14
12	13	S 77	21	40E	335.03
13	14	N 52	09	20E	291.35
14	15	N 60	55	10 E	338.99
15	16	N 37	37	10E	303.06
16	17	N 23	43	20E	456.88
17	18	S 67	15	00E	333.86
18	19	S 47	22	10E	305.19
19	20	S 38	01	00E	160.95
21	22	S 21	36	00E	684.17
22	23	S 28	20	00E	219.54
23	24	S 41	24	20E	197.32
24	25	S 21	36	20E	264.07
25	26	S 13	13	50W	74.75
26	27	S 13	13	50W	234.53
27	28	S 29	05	20E	240.06
28	29	S 34	18	20E	472.22
29	30	S 54	17	10E	416.42
30	31	S 30	16	40E	70.25
32	33	S 26	06	00E	413.09
33	34	S 33	14	50E	307.77
34	35	S 63	23	20E	522.80
35	36	S 74	52	50E	393.47
36	37	S 64	49	10E	95.80

TRACT NO. 1 TO BE ACQUIRED BY THE UNITED STATES. 330.31 ACRES  
TRACT NO. 2 TO BE ACQUIRED BY THE UNITED STATES. 2127 ACRES

OUT





[Title of District Court and Cause.]

JUDGMENT ON DECLARATION  
OF TAKING

This cause coming on to be heard upon the motion of the petitioner, the United States of America, to enter a judgment on the Declaration of Taking filed in the above-entitled cause on December 9th 1939, and for an order fixing the date when possession of the property herein described is to be surrendered to the United States of America, and upon consideration thereof and of the condemnation petition filed herein, said Declaration of Taking, the statutes in such cases made and provided, and it appearing to the Court

First, That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed in said petition:

Second, That a petition in condemnation was filed at the request of the Acting Under Secretary of the Interior of the United States, the authority empowered by law to acquire the lands described in said petition, and also under authority of the Attorney General of the United States;

Third, That said petition and Declaration of Taking state the authority under which, and the public use for which said lands were taken, that the Acting Under Secretary of the Interior of the United States is the person authorized and empowered by law to acquire lands such as are described in the petition for the purposes therein

stated, and that the Attorney General of the United States is the person authorized by law to direct the institution of such condemnation proceedings;

Fourth, That a proper description of the land sought to be taken, sufficient for identification thereof, is set out in said Declaration of Taking;

Fifth, That said Declaration of Taking contains a statement of the estate or interest in the said lands taken for said public use; [18]

Sixth, That a plat showing the lands taken is incorporated in said Declaration of Taking;

Seventh, That a statement is contained in said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for said lands, in the amount of \$8,191.70 and that said sum was deposited in the Registry of this Court, for the use of the persons entitled thereto, upon and at the time of the filing of the said Declaration of Taking;

Eighth, That a statement is contained in said Declaration of Taking that the amount of the ultimate award of compensation for the taking of said property, in the opinion of the said Acting Under Secretary of the Interior will be within any limits prescribed by Congress as to the price to be paid therefor; it is therefore, this 9th day of December, 1939,

Adjudged, Ordered and Decreed that the title to  
[19]

## Tract No. 1

(The Washington Water Power Company  
tract)

The following described property situate in the County of Stevens, State of Washington, to-wit:

Lot one (1) in the northeast quarter ( $NE\frac{1}{4}$ ). Lot two (2) in the northeast quarter ( $NE\frac{1}{4}$ ), and lot three (3) in the southeast quarter ( $SE\frac{1}{4}$ ) of Section eleven (11). Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian (patented under date of July 22, 1896 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus) being islands in the Columbia River, containing 88.85 acres, more or less.

Also, Lot one (1), the north half of Lot two ( $N\frac{1}{2}$  of Lot 2), the north half of the southeast quarter of the northwest quarter ( $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ ) and the northeast quarter of the northwest quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ) of Section twelve (12), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, containing 93.00 acres, more or less.

Also, a tract of land containing 21.14 acres, more or less, being that portion of Lot one (1) and the southwest quarter of the northeast quarter ( $SW\frac{1}{4}NE\frac{1}{4}$ ) of section fourteen (14), and that portion of Lots one (1) and two (2) and the southeast quarter of the southeast quarter ( $SE\frac{1}{4}SE\frac{1}{4}$ ) of Section eleven (11) (pat-

ented under date of June 8, 1891 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus), all in Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, lying between the east line of the Columbia River and a line described as follows: Beginning at a point on the west line of the southwest quarter of the northeast quarter ( $SW\frac{1}{4}$   $NE\frac{1}{4}$ ) of said Section fourteen (14), which point bears North  $02^{\circ}54'10''$  west 1070.85 feet and south  $87^{\circ}57'49''$  West 2630.26 feet from the quarter section corner on east line of said Section Fourteen (14); running thence North  $05^{\circ}35'00''$  East 207.92 feet; thence North  $36^{\circ}13'00''$  East 476.48 feet; thence North  $07^{\circ}55'20''$  East 517.39 feet; thence North  $00^{\circ}01'00''$  East 296.85 feet; thence North  $11^{\circ}31'40''$  East 220.19 feet; to a point on the north line of said Section fourteen (14), which point bears South  $87^{\circ}59'45''$  West 2141.46 feet from the northeast section corner of said section fourteen (14); thence North  $11^{\circ}31'40''$  East 184.15 feet; thence north  $27^{\circ}35'10''$  east 241.46 feet; thence North  $44^{\circ}34'50''$  East 285.64 feet; thence North  $11^{\circ}38'10''$  West 583.14 feet; thence south  $77^{\circ}21'40''$  East 335.03 feet; thence North  $52^{\circ}09'20''$  east 291.35 feet; thence North  $60^{\circ}55'10''$  East 338.99 feet; thence North  $37^{\circ}37'10''$  East 303.06 feet; thence North  $23^{\circ}43'20''$  East 456.88 feet; thence South

67°15'00" east 333.86 feet; thence South 47°22'10" East 305.19 feet; thence south 38°01'00" East 160.95 feet to a point on the east line of said Section eleven (11), which point bears North 02°01'13" West 1561.06 feet from the southeast section corner of said Section eleven (11); excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway).

Also, Lot two (2) of Section fourteen (14), Township thirty-six (36) north, range thirty-seven (37) east, Willamette Meridian, excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway), containing 13.80 acres, more or less.

Also, a tract of land containing 79.43 acres, more or less, being all of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of section twelve (12), and a portion of the southwest quarter of the southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$ ) of section twelve (12) and the Northwest quarter of the Northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), all in Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the north line of the southwest quarter of the southwest quarter



(SW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of said Section twelve (12), which point bears north 02°01'13" West 1320.00 feet and North 85°30'05" East 108.45 feet from the southwest corner of said Section twelve (12); running thence north 85°30'05" east 2417.99 feet to the northeast corner of the southeast quarter of the southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of said section twelve (12); thence South 01°37'15" East 1313.28 feet to the quarter section corner on the south line of said Section twelve (12); thence south 85°20'21" west 1262.15 feet along the south line of said section twelve (12) to the southwest corner of the southeast quarter of the southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of said section twelve (12); thence south 03°10'19" east 1185.64 feet along the east line of the northwest quarter of the northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said Section thirteen (13); thence north 30°16'40" West 70.25 feet; thence North 54°17'10" West 416.42 feet; thence North 34°18'20" West 472.22 feet; thence North 29°05'20" West 240.05 feet; thence North 13°13'50" East 234.53 feet to a point on the north line of said Section thirteen (13), which point bears North 85°20'21" East 622.95 feet from the northwest section corner of said section thirteen (13); thence north 13°13'50" east 74.75 feet; thence North 21°36'20" west 264.07 feet; thence North 41°24'20" West 197.32 feet; thence North 28°20'00" West 219.54 feet; thence North 21°36'00" West 664.17 feet to the point of beginning. [21]



The following described property situate in the County of Ferry, State of Washington, to-wit:

A tract of land containing 34.09 acres, more or less, being that portion of Lot two (2), Lot five (5) (formerly known as Lot 1) and Lot six (6) (formerly known as Lot 3), of section eleven (11), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, between the west line of the Columbia River and a line described as follows: Commencing at a point on the south line of Lot six (6) (formerly known as Lot 3) of said Section eleven (11), which point bears south  $02^{\circ}08'00''$  East 1320.68 feet and North  $87^{\circ}56'06''$  East 1977.31 feet from the quarter section corner on the west line of said section eleven (11); running thence North  $05^{\circ}26'30''$  East 493.38 feet; thence North  $23^{\circ}37'40''$  east 511.06 feet; thence south  $44^{\circ}39'00''$  East 309.36 feet; thence north  $03^{\circ}30'50''$  East 255.82 feet; thence North  $10^{\circ}53'10''$  West 376.77 feet; thence north  $01^{\circ}36'10''$  east 250.34 feet; thence North  $38^{\circ}35'00''$  east 371.59 feet; thence south  $04^{\circ}28'10''$  east 608.63 feet; thence north  $12^{\circ}48'20''$  East 461.47 feet; thence North  $02^{\circ}12'10''$  East 375.15 feet; thence North  $63^{\circ}18'10''$  West 269.31 feet; thence North  $01^{\circ}32'00''$  east 628.77 feet; thence North  $08^{\circ}59'50''$  east 619.09 feet; thence North  $27^{\circ}46'00''$  West 217.77 feet; thence South  $81^{\circ}55'20''$  East 228.43 feet; thence North

32°15'00" East 383.24 feet; thence North 56°35'40" east 64.33 feet to a point on the north line of said section eleven (11), which point bears north 87°44'41" east 621.57 feet from the quarter section corner on the north line of said section eleven (11); excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway).

Also that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated October 30, 1928, as set forth in Book 5 of Miscellaneous Deeds, at page 111, of the records of Ferry County, Washington, to erect, construct, reconstruct, and maintain a gaging station together with the necessary steel tower, anchors, cables, guys and appurtenances over, along and across Lot six (6) of section twenty-two (22), Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian;

Also, that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated September 21, 1934, as set forth in Book 5 of Miscellaneous Records, at page 299 of the records of Ferry County, Washington, to erect, construct, reconstruct and maintain a gaging station together with the necessary appurtenances over, along and across Lot three (3) of section twenty-two (22),

Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian. [22]

Tract No. 2

(Hummel Tract)

Also the following described property situate in the County of Stevens, State of Washington, to-wit:

A tract of land containing 21.27 acres, more or less, lying and being in the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the east line of the Southeast Quarter of the Northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13), which point bears North  $86^{\circ}09'57''$  east 2568.16 feet and North  $03^{\circ}38'34''$  West 247.27 feet from the quarter section corner on the west line of said Section thirteen (13); running thence North  $64^{\circ}49'10''$  West 95.80 feet; thence North  $74^{\circ}52'50''$  West 393.47 feet; thence North  $63^{\circ}23'20''$  West 522.80 feet; thence North  $33^{\circ}14'50''$  West 307.77 feet; thence North  $26^{\circ}06'00''$  West 413.09 feet to the point of intersection with the north line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence north  $85^{\circ}45'25''$  East 1197.80 feet to the northeast corner of the southeast quarter of the

northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence south  $03^{\circ}38'34''$  East 1105.80 feet along the east line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13) to the point of beginning. [23]

in fee simple vested in the United States of America upon the filing of said Declaration of Taking and the Depositing in the Registry of this court of the said sum of \$8,191.70, as hereinabove recited, that said lands are deemed to have been condemned and taken for the use of the United States of America and the right to just compensation for the property taken, upon the filing of the Declaration of Taking, vested in the persons entitled thereto, and the amount of compensation shall be ascertained and awarded in this proceeding and established by judgment herein pursuant to law, and

It is further Adjudged, Ordered and Decreed that possession of all such property that is now vacant, unoccupied and uncultivated be given to the United States of America on or before the 8th day of January, 1940; that as to the part of such property that is now occupied or cultivated, possession be given to the United States of America on or before the 18th day of January, 1940, and this cause is held open for such other and further orders, judgments and decrees as may be necessary in the premises.

Dated this 9th day of December, 1939.

LLOYD L. BLACK,  
United States District Judge.

Presented by

SAM M. DRIVER,

United States Attorney.

[Endorsed]: Filed Dec. 9, 1939. A. A. LaFramboise, Clerk. [24]

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated by and between the plaintiff and the defendant The Washington Water Power Company, for the purposes of this case only:

1. That The Washington Water Power Company is the owner of all the land described in the petition and sought to be condemned in the above entitled proceeding, except the tract designated in said petition as "Tract No. 2 (Hummel Tract)", which it is agreed was owned by Lillian C. Hummel, a spinster, prior to the filing of the declaration of taking in the above entitled case. That the lands owned by The Washington Water Power Company and so described in said petition are a part of a larger tract of land purchased as a unit by The Washington Water Power Company in the vicinity of Kettle Falls, which tract is described as follows:



	Sec.	Twp.	Range	
Lots 2, 5, (formerly lot 1), and Lot 6 (formerly lot 3)	11	36 N.	37 E.W.M.	In Ferry County, Washington
Lots 1, 2, and 3, being islands in the Columbia River	11	36 N.	37 E.W.M.	In Stevens County, Washington
Lots 1 and 2, and SE $\frac{1}{4}$ SE $\frac{1}{4}$	11	36 N.	37 E.W.M.	In Stevens County Washington
Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ of Lot 2, NE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ SW $\frac{1}{4}$	12	36 N.	37 E.W.M.	In Stevens County, Washington
W $\frac{1}{2}$ NW $\frac{1}{4}$	13	36 N.	37 E.W.M.	In Stevens County, Washington
Lots 1 and $\frac{2}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and E $\frac{1}{2}$ NE $\frac{1}{4}$	14	36 N.	37 E.W.M.	In Stevens County, Washington.

Should the Court hold that the defendant The Washington Water Power Company is entitled to offer evidence of power site values, then it is agreed that on the date of the entry of the judgment on Declaration of Taking herein entered (December 9, 1939), the value of the portion of the above described [25] lands not described in the Declaration of Taking filed in the above-entitled case was Seven Thousand Six Hundred Ten and 00/100 Dollars (\$7,610.00).

2. That the Columbia River is a navigable stream throughout its entire length in the United States.

3. That the words "power site values" whenever herein used shall mean the enhanced market value, if any, the lands being condemned may have because of their extent, particular location, and rela-



tion to the Columbia River, rock formation, or other characteristics which might make said lands suitable or adaptable for a hydroelectric power development, or the value, if any, said lands may have as a part of or for use in connection with any undertaking to create any hydroelectric power development.

4. That the said lands of the defendant The Washington Water Power Company, being condemned in the above entitled proceeding, are riparian lands adjoining or adjacent to that part of the river bed commonly known as Kettle Falls as shown on the map attached to the petition for condemnation herein. That to utilize defendant's said property for power site purposes would require the construction of a dam on and across the bed of the Columbia River at or near Kettle Falls and the construction of various structures in the channel of said stream and between the ordinary high water line and the low water line thereof.

5. That the lands of the defendant The Washington Water Power Company, being condemned in this proceeding, have a reasonable value for agricultural, grazing and timber purposes and for all or any other purposes for which they are adapted other than for power site values equal to the amount deposited in the Court by the plaintiff as the estimated value of the said tract of land, to-wit: the sum of Seven Thousand Nine Hundred Fifty and 35/100 Dollars (\$7,950.35).

6. That should the Court hold that evidence of power site values is inadmissible then it is stipulated and agreed that what severance damages, if any, the said defendant, The Washington Water Power Company, has suffered to the remainder or unappropriated portion of its holdings are included in the sum of Seven Thousand Nine Hundred Fifty and 35/100 Dollars (\$7,950.35) [26] and the award to the defendant should be the said sum of Seven Thousand Nine Hundred Fifty and 35/100 Dollars (\$7,950.35). But in the event the Court holds that evidence of power site values is admissible then either party may offer such evidence as may be competent, material and relevant concerning damages to the remainder of said defendant's property.

7. That should the Court hold that said defendant The Washington Water Power Company is entitled to offer evidence of power site values then it is agreed that there could be safely constructed at Kettle Falls on the Columbia River, partly on said lands of said defendant being condemned and partly on lands in the bed of the Columbia River between high and low water thereof, a dam and power house, the power house to contain water turbines and generators operated ultimately under a maximum head of 124 feet and a minimum head of 75 feet and a mean static head of 114 feet, and that it is physically practical and feasible to construct and operate such a hydroelectric power development at the said Kettle Falls. That a completed hydroelectric power plant, or one capable of generating electric energy,

could not be built solely on said defendant's lands but would require the use of lands within the bed of the Columbia River.

8. Both parties reserve all rights to except to any adverse ruling by the Court on the question whether the said defendant is entitled to offer evidence of power site values for its said lands and all rights of appeal therefrom and all rights to present their respective contentions on that question in the appellate courts and the right to object to evidence or testimony offered in support of such power site values. This stipulation shall not be considered as a waiver of any such rights by either party.

9. That photostatic or other copies of orders, proceedings before, or records of the Federal Power Commission, of the State Supervisor of Hydraulics of Washington, of the United States Army Engineers, of the United States Geological Survey, of the State Land Commissioner of Washington, and correspondence and records re expense paid by The Washington Water Power Company to Government and Government employees, and letters to and from The Washington Water Power Company, the Federal Power Commission, the State Supervisor of [27] Hydraulics of Washington, the United States Army Engineers, the United States Geological Survey, the State Land Commissioner of Washington, including photostatic or other copies of carbon copies of letters addressed to the same where such carbon copies are found regularly filed in the files

of either party thereto, if otherwise admissible, will be given the same effect and will be considered with equal standing with the original as to admissibility, provided that at least thirty (30) days prior to the day set for trial of this cause the said defendant will deliver to the plaintiff duplicates of any such photostatic or other copies which it proposes to offer at the trial of this cause; and that at least fifteen (15) days prior to the day set for trial of this cause the said plaintiff will deliver to the said defendant duplicates of any such photostatic or other copies which it proposes to offer at the trial of this cause; it being understood that neither party shall be obliged to offer at the trial any such copies but that the right to offer such photostatic or other copies, instead of the originals, will be limited to those photostatic or other copies duplicates of which have been served upon the opposing parties the agreed length of time prior to trial. Unless otherwise shown, the introduction of such photostatic or other copies of letters and carbon copies thereof will be proof that all such letters or carbon copies, of which photostatic or other copies are admitted in evidence were received by the parties to whom they were addressed. Both parties reserve the right to object to any such copy of orders, records, proceeding or letters on the ground that same are immaterial, or any other ground of objection which would properly apply to original records, other than lack of specific proof that such letters or communications were sent by the party signing the same



or received by the party to whom they were addressed.

It Is Agreed, however, that if either party upon checking photostatic copy served upon it by the other party with the original or official records shall find errors in such copy or discrepancy between such copy and the original or official records, such errors in the copies will be corrected so that the copies will correspond with the original records.

It Is Further Agreed that upon checking of photostatic copies of purported [28] correspondence between the defendant and the Washington State Supervisor of Hydraulics and of the application for permit to appropriate water and the application for permit to construct a reservoir and to store for beneficial use the unappropriated water of the State of Washington, heretofore served by defendant upon the plaintiff, errors in the copies and discrepancies between the purported copies and the original records have been found as follows:

(1) The served copy of application for permit to appropriate water is a photostat of a duplicate and differs from the original in the office of the Washington State Supervisor of Hydraulics in that the original in the office of the State Supervisor of Hydraulics bears a notation in red ink on the first line thereof, "Cancelled 3-3-37", which notation does not appear on the served copy.

(2) The served copy of application for a permit to construct a reservoir and to store for beneficial use the unappropriated waters of the State of Wash-

ington is a photostat of a duplicate and differs from the original in the office of the State Supervisor of Hydraulics in that the original in the office of the State Supervisor of Hydraulics bears a notation in red ink on the first line thereof, "Cancelled 3-3-37" which notation does not appear on the served copy.

(3) The office memorandum of V. H. Greisser, relating to Mr. Chase's letter of January 26, 1922, is merely an office memorandum of the defendant company and does not appear in the files of the State Supervisor of Hydraulics.

(4) The purported letter of July 12, 1932, from F. T. Post as President of The Washington Water Power Company was not sent or received.

It Is Further Agreed between the parties hereto that prior to the time of trial one or more of the attorneys for each of the parties hereto will deposit with the Clerk of the above entitled Court duplicate photostatic or other copies of such orders, records, proceedings and letters as have been served by each of the parties hereto pursuant to the provisions of this stipulation. That such photostatic or other copies so deposited with the Clerk of the above entitled Court shall be placed by the said Clerk, or one [29] of his deputies, according to the classification of such copies, in one of several envelopes labeled as follows, to-wit:

Correspondence with, proceedings before, orders and records of the Federal Power Commission;



Correspondence with, orders and records of the State Supervisor of Hydraulics of Washington;

Correspondence with, orders and records of the United States Army Engineers;

Correspondence with, orders and records of the State Land Commissioner of Washington;

Correspondence with, orders and records of the United States Geological Survey;

Correspondence and records re expense paid by The Washington Water Power Company to Government and Government Employees.

It Is Further Agreed that each of the envelopes in which the said photostatic or other copies are deposited, as heretofore provided, shall, in addition to the label thereon heretofore mentioned, have written upon said envelopes the following written matter;

“In the District Court of the United States for the Eastern District of Washington Northern Division

No. 52

United States of America,

Petitioner,

vs.

The Washington Water Power Company, a corporation, et al.,

Defendants.

It Is Hereby Agreed By and between attorneys for the parties hereto, made and entered

into the date hereunto fixed, that the photostatic or other copies contained in this envelope are those which have been regularly served in accordance with the terms of that stipulation made and entered into by and between the parties hereto with reference to photostatic or other copies and have been compared by representatives of the parties hereto. Said photostatic or other copies may be offered in evidence subject to the terms of the aforementioned stipulation.

Signed in the presence of the Clerk of the above entitled Court this ..... day of ....., 1941.

Signed in my presence ..... this ..... day of ....., 1941.

.....  
Attorneys for Petitioner.

.....  
Clerk of the above entitled Court.

.....  
Attorneys for The Washington  
Water Power Company, The  
City Bank Farmers Trust  
Company, and Ralph E. Mor-  
ton, trustee, Defendants.”

[30]

It Is Further Agreed that after the photostatic or other copies have been so deposited by the attorney or attorneys for the parties hereto, the Clerk of the above entitled Court shall seal each of the envelopes in which the same are deposited; and that the attorney or attorneys for the parties so depositing said photostatic or other copies shall sign that agreement set forth by the written matter contained on each of the envelopes in which the photostatic or other copies are so deposited; and the clerk of the above entitled Court shall attest the signing of said agreement by the said attorneys by signing his name in the place provided therefor in said written matter.

It Is Further Agreed that the envelopes in which said photostatic or other copies are so deposited shall be retained by the Clerk of the above entitled Court in his possession until the time of trial, when said envelopes shall be produced in open Court by the said Clerk.

10. That copies of any maps, reports, records, or statistics compiled or published under authority of the United States of America, or any State of the Union, or of any Department, Officer, Board, Commission or Tribunal of the United States, or of any of said States, may be received in evidence without authentication or certification and without objection except as to relevancy or materiality. The right to object to the admission in evidence of maps, reports, records, or statistics on the ground of irrelevancy or immateriality is expressly reserved.

11. That the plaintiff has the right to condemn the said lands for the purposes named in the complaint.

12. That the backwater from said proposed dam at said Kettle Falls would flood approximately 518 different tracts of privately owned land in approximately 400 different ownerships, and would also flood some withdrawn or reserved public land of the United States (including Indian Reservation land) and also some State land.

It Is Agreed that the reasonable market value (for all purposes other than reservoir site or power site purposes) of the property which would be flooded by the proposed dam at Kettle Falls, exclusive of railroad and highway [31] property is approximately One Million Dollars (\$1,000,000.00) and that it would cost approximately Two Million Dollars (\$2,000,000.00) to relocate and reconstruct the railroad and highways which would be flooded by the said proposed Kettle Falls dam, and that there are two other power sites in the area which would be flooded by said dam.

13. That the defendants City Bank Farmers Trust Company and Ralph E. Morton, Trustee, have no interest in the premises involved in this action except under mortgage or deed of trust from The Washington Water Power Company and shall be bound by this stipulation to the same extent and in the same manner as The Washington Water Power Company.

Dated July 2, 1941.

LYLE KEITH,  
B. E. STOUTEMYER,  
Attorneys for Petitioner.  
POST, RUSSELL, DAVIS &  
PAINE, -

H. E. T. HERMAN,  
Attorneys for The Washing-  
ton Water Power Company,  
the City Bank Farmers  
Trust Company, and Ralph  
E. Morton, Trustee, De-  
fendants.

[Endorsed]: Filed Aug. 19, 1941. A. A. LaFram-  
boise, Clerk. [32]

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[Title of District Court and Cause.]

### STIPULATION

It is hereby stipulated and agreed by and between petitioner United States of America and the defendant Washington Water Power Company as follows:

(1) That the petitioner herein on December 9, 1939, filed its petition for condemnation of the certain premises, easements and rights therein described.

(2) That on December 9, 1939, the petitioner filed a declaration of taking vesting title to the cer-



tain premises, easements and rights described in the petition in the United States of America and judgment on declaration of taking was entered and adjudged in the above-entitled court on December 9, 1939.

(3) That included in the lands the title to which was acquired by the petitioner in the above-entitled proceedings is the following described tract situated in the County of Stevens, State of Washington, to-wit:

Tract No. 2

(Hummel Tract)

A tract of land containing 21.27 acres, more or less, lying and being in the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the east line of the Southeast Quarter of the Northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13), which point bears North  $86^{\circ}09'57''$  east 2568.16 feet and North  $03^{\circ}38'34''$  West 247.27 feet from the quarter section corner on the west line of said Section thirteen (13); running thence North  $64^{\circ}49'10''$  West 95.80 feet; thence North  $74^{\circ}52'50''$  West 393.47 feet; thence North  $63^{\circ}23'20''$  West 522.80 feet;

thence North  $33^{\circ}14'50''$  West 307.77 feet; thence North  $26^{\circ}06'00''$  West 413.09 feet to the point of intersection with the north line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence north  $85^{\circ}45'25''$  East 1197.80 feet to the northeast corner of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence south  $03^{\circ}38'34''$  East 1105.80 feet along the east line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13) to the point of beginning.

(4) That the tract described in paragraph 3 above on the date of the taking was owned by the defendant Lillian C. Hummel, a spinster; that the estimated fair market value of the said tract was \$241.35; and that said amount was deposited with the Clerk of the above-entitled court by the petitioner as compensation for the taking of said premises. [33]

(5) That the defendant The Washington Water Power Company, a corporation, hereby waives any claim to compensation for such premises and hereby stipulates and agrees that the Judge of the above-entitled court may enter a judgment in conformity with this stipulation; and stipulates that the estimated fair market value of all the premises described in said petition may be reduced to the extent of the \$241.35 herein stipulated and agreed to be

paid to the said defendant Lillian C. Hummel, a spinster.

Dated this 21 day of August, 1941.

LYLE KEITH,

United States Attorney.

B. E. STOUTEMYER,

Assistant United States Attorney.

H. E. T. HERMAN,

POST, RUSSELL, DAVIS &  
PAINE,

Attorneys for The Washington Water Power Company,  
a corporation.

[Endorsed]: Filed Sep. 16, 1941. A. A. LaFramboise, Clerk. [34]

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[Title of District Court and Cause.]

## JUDGMENT ON STIPULATION

(Hummel Tract)

The above-entitled cause came on for hearing this day pursuant to that certain stipulation heretofore entered into between the petitioner and the defendant Lillian C. Hummel, for the entry of a judgment herein directing payment to the defendant Lillian C. Hummel of the sum of \$241.35 heretofore deposited by the petitioner with the clerk of this court as estimated just compensation for the taking

of the tract of land hereinafter described, and pursuant to that certain stipulation heretofore entered into between the petitioner and the defendant The Washington Water Power Company, a corporation, waiving any claim to compensation for said tract; and it appearing that said defendant, Lillian C. Hummel, a spinster, was at the time of the taking of said tract of land by the Government the sole and exclusive owner thereof and that said defendant has by stipulation agreed to accept the sum of \$241.35 in full settlement for the condemnation and taking of said tract of land hereinafter described;

Now, Therefore, the Court having considered said stipulations and having found the amount of such consideration to be the fair and reasonable value of said tract of land so taken and of all damages [35] sustained by reason of such taking, and having found that there are no persons having any right to compensation except as set forth therein, and the Court being generally fully advised in the premises, it is hereby

Ordered, Adjudged and Decreed that the clerk of this court pay the sum of \$241.35 now on deposit with the clerk for the tract of land hereinafter described to the said Lillian C. Hummel, a spinster, less unpaid taxes, if any. That such payment be made without any deduction for clerk's fees, commission or poundage. That no interest shall be paid on said sum.

It Is Further Ordered, Adjudged and Decreed that the consideration hereinabove expressed represents the full and fair value of the tract of land below described, together with any and all damages which have been sustained or may be sustained by all persons whatsoever by reason of the condemnation and taking thereof by the United States, and that payment of the moneys hereinabove ordered shall constitute full settlement of all claims against the United States of America and the final award of just compensation for the taking of said tract of land situated in the County of Stevens, State of Washington, and more particularly described as follows, to-wit:

Tract No. 2

(Hummel Tract)

A tract of land containing 21.27 acres, more or less, lying and being in the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the east line of the Southeast Quarter of the Northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13), which point bears North  $86^{\circ}09'57''$  east 2568.16 feet and North  $03^{\circ}38'34''$  West 247.27 feet from the quarter section corner on the west line of said Section thirteen



(13); running thence North  $64^{\circ}49'10''$  West 95.80 feet; thence North  $74^{\circ}52'50''$  West 393.47 feet; thence North  $63^{\circ}23'20''$  West 522.80 feet; thence North  $33^{\circ}14'50''$  West 307.77 feet; thence North  $26^{\circ}06'00''$  West 413.09 feet to the point of intersection with the north line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence north  $85^{\circ}45'25''$  East 1197.80 feet to the northeast corner of the southeast quarter of the [36] northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence south  $03^{\circ}38'34''$  East 1105.80 feet along the east line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13) to the point of beginning.

It Is Further Ordered, Adjudged and Decreed that the public use requires the condemnation of said tract of land, and that title to said tract is vested in the United States of America in fee simple, free and clear of any and all charges, interests, claims, taxes, liens and encumbrances of any kind or character whatsoever.

It Is Further Ordered, Adjudged and Decreed that, it appearing that they have no interest in the premises herein described, the unknown heirs of any of the defendants herein, if deceased, and all other persons, firms or corporations, unknown, having or claiming to have any right, title, estate, lien

or interest in or to said tract of land, or any portion thereof are hereby dismissed as to said tract.

Dated this 24 day of September, 1941.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

LYLE KEITH,  
United States Attorney.

[Endorsed]: Filed Sep. 24, 1941. A. A. LaFramboise, Clerk. [37]

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[Title of District Court and Cause.]

TRANSCRIPT OF EVIDENCE AND  
PROCEEDINGS [38]

Before:

Hon. Lewis W. Schwellenbach, J., and a Jury.

Date:

September 15, 1941.

Appearances:

For the Petitioner:

Lyle D. Keith, District Attorney,  
Federal Building,  
Spokane, Washington.

B. E. Stoutemyer, District Counsel,  
United States Bureau of Reclamation,  
Portland, Oregon.

For the Defendant The Washington Water  
Power Company:

Post, Russell, Davis & Paine, Attorneys,  
Spokane & Eastern Building,  
Spokane, Washington.

H. E. T. Herman, Attorney,  
Columbia Building,  
Spokane, Washington.

For the Defendant Ferry County:

Osee W. Noble, Prosecuting Attorney,  
Republic, Washington.

For the Defendant Stevens County:

F. Leo Grinstead, Prosecuting Attorney,  
Colville, Washington.

Be It Remembered:

That the above entitled cause came on for trial and determination on the 15th day of September, 1941, at the hour of 9:30 o'clock in the forenoon of said day before the Hon. Lewis W. Schwellenbach, Judge presiding and a jury, in the District Court of the United States For the Eastern Dis-  
[39] trict of Washington, Northern Division, the petitioner, The United States of America, appearing by Lyle D. Keith, District Attorney, Spokane, Washington, and B. E. Stoutemyer, District Counsel, United States Bureau of Reclamation, Portland, Oregon; the Defendant The Washington Water Power Company appearing by its attorneys Post, Russell, Davis & Paine (Mr. Alan G. Paine

being personally present), and H. E. T. Herman; the Defendant Ferry County appearing by its attorney Osee W. Noble, Prosecuting Attorney, and the Defendant Stevens County appearing by its attorney F. Leo Grimstead, Prosecuting Attorney, and all parties present having announced they were ready for trial, the following proceedings were had:

[40]

The Court: Mr. Keith, will you explain to me the status with reference to the parties. There were a large number of parties when this case was originally started.

Mr. Keith: Aside from those represented here, the only other defendant who has made an appearance is Lillian C. Hummel, who is the owner of a tract of land. I might say in regard to that tract a stipulation has been signed between the plaintiff and The Washington Water Power Company, by which The Washington Water Power Company disclaims interest in that tract and a stipulation as to the value of the tract between the defendant Lillian C. Hummel and the plaintiff has been entered into and will be filed. It was received only this morning, so that situation, I think, will be taken care of by judgment entered pursuant to the stipulation, as to the Hummel tract. Other than the owners of that tract and the parties who are represented in court, no other appearances have been made. I therefore move that an Order of Default be entered as against all remaining defendants.

The Court: The motion is granted.

(Whereupon, the jurors in the court room were sworn as to their qualifications and a jury was selected and sworn to try the case.)

(Whereupon, counsel approached the Bench for a brief conference.)

The Court: Now gentlemen, there is this matter of the counties, as you just explained, that it is satisfactory to all counsel to let the testimony be submitted by the counties first. The question I have in mind is this: Were it not for that fact, I would proceed to read the stipulation to the jury [41] which has been entered into as between the government and The Washington Water Power Company and the other defendants. The purpose of having the counties testify first is that the county officials may go back home and attend to their official business, and I am wondering whether it would not be just as satisfactory to let them go on first and get them out and then you may make your opening statement and I will read the stipulation and go on with the case.

Mr. Keith: The government will stipulate that that is agreeable with us.

Mr. Paine: Yes, that is agreeable. [42]



W. R. HALL,

being first duly sworn, was examined and testified as a witness on behalf of Ferry County as follows:

Direct Examination

By the Court:

Q. Your name is W. R. Hall? A. Yes.

Q. Where do you live, Mr. Hall?

A. Republic.

Q. And you are an official of what county?

A. Ferry County Assessor.

Mr. Noble: Q. Were you Ferry County Assessor on the first day of January, 1939?

A. Yes, sir.

Q. At that time did you fix values as assessor for tax purposes on certain lands in Section 11, Township 36, Range 37, EWM.?

A. Yes, sir.

Mr. Keith: Just a moment. I object to that question on the ground that unless he is testifying as to some positive physical act on his part that the question asked would call for a conclusion on the part of the witness.

The Court: Objection overruled.

Mr. Noble: Q. You did this work yourself, Mr. Hall? A. Yes.

Q. And at the time you did this did you prepare any sheets or record at that time?

A. Yes, our detail sheets.

Q. Do you know those valuations at this time?

(Testimony of W. R. Hall)

A. Yes.

Q. Do they show on your detail sheets?

A. Yes.

Q. And those were the sheets that you made?

A. Yes, sir.

Q. Will you state what those valuations were, Mr. Hall.

Mr. Keith: As to what property, please?

Mr. Noble: The land in controversy in this case. I can get the complaint and read it, if you wish. I will withdraw that question for the time being.

(Q) Mr. Hall, at the time you assessed that land was there more than one sub-division of that particular section assessed in a body?

A. I assessed it as Lots 1, 2 and 6.

Q. This land was in Section 11, Township 36 North, Range 37, EWM. What description have you on your detail sheets?

A. I have Lots 1, 2 and 6, Section 11, Township 36 North, Range 37, EWM, containing 134.8 acres.

Q. And what was the amount of the assessment at that time?

A. Twenty-five thousand dollars.

Q. Have you got a certified copy of your detail sheets there?

A. Yes, sir (sheets produced).

Mr. Noble: (Addressing the clerk) Will you mark that, please. (Exhibit marked "Ferry County's Exhibit 1 for identification.)

(Testimony of W. R. Hall)

Mr. Noble: At this time I offer this certified copy in evidence.

Mr. Keith: May it please the Court, for the time being I want to object to the introduction of the exhibit on the ground that it is not established by this identification, by [44] the testimony of the witness, that the assessment which this purports to cover is upon the lands which are the subject of this litigation.

The Court: He has testified it is the assessment of Lots 1, 2 and 6, Section 11, Township 36 North, Range 37, East of the Willamette Meridian, Ferry County.

Mr. Noble: If Your Honor please, this was the assessment of all of the land. At that time the taking hadn't taken place and it was all assessed in one body and the next exhibit will show the particular tract eliminated that was taken, but the lien attached before there was any taking or before there was any claim filed or any petition filed in this action, and that is the particular lien that is in controversy for taxes at that time.

The Court: I don't see how, when you have a tract of land that has been assessed as a whole and the question of the time of the attachment of the lien is made, how they could prove their case in any other way than by putting in, as they are trying to do, first, the full assessment and then segregate later, but the segregation came after the declaration of taking, as I understood it. Conse-

(Testimony of W. R. Hall)

quently, in order to get it back to the time that is important, I think they will have to put in the whole assessment.

Mr. Keith: If there will be a segregation later I will withdraw the objection.

The Court: The exhibit is admitted.

Whereupon, a- Ferry County Assessment Sheet, marked for identification Ferry County's Exhibit 1, was received and admitted in evidence and is hereto attached and made a part hereof. [45]

Mr. Noble: Q. Mr. Hall, subsequent to January 1, 1939, you received a copy of a declaration of taking and a complaint entitled United States vs. The Washington Water Power Company and others wherein this same property, the title to this property was affected?

A. Yes, that was filed in the auditor's office.

Q. And subsequent to the declaration of taking, did you receive any plats from the Department of Reclamation or other source or any record showing the amount that was taken?

A. Yes, I received the maps from the Bureau of Reclamation.

Q. And using that map did you make any segregation of this particular property subsequent to that time? A. Yes.

Q. And as a result of that did you prepare for the following year a detail sheet? A. Yes.

(Testimony of W. R. Hall)

Q. Have you that detail sheet with you showing the inclusion of this particular property?

A. Yes.

Q. And is it properly certified? A. Yes.

Q. And what valuation did you fix on the property remaining? A. Four hundred dollars.

Mr. Noble: I will ask to have this marked Defendant's Ferry County Exhibit No. 2. (Q) Mr. Hall, how did you reach your basis of assessment that year?

A. On this one over here (witness referring to Exhibit 2)?

Q. Yes. [46]

A. As Just the ordinary grazing land with scattering timber.

Q. This detail sheet shows the amount still retained by The Washington Water Power Company?

A. Yes, ninety and some-odd acres.

Q. And in 1940, January 1, 1940, no detail sheet was made up on the other tract?

A. No. That was after.

Q. That was subsequent to the taking?

Mr. Noble: I ask to have this introduced as Defendant Ferry County's Exhibit No. 2.

The Court: Any objection?

Mr. Keith: No objection.

The Court: It may be admitted.

Whereupon, a Detail Assessment Sheet marked for identification Ferry County's Ex-



(Testimony of W. R. Hall)

hibit No. 2, was received and admitted in evidence and is hereto attached and made a part hereof.

Mr. Noble: That is all. You may cross-examine.

Cross Examination

By Mr. Stoutemyer:

Q. Mr. Hall, in your assessment of this land did you take into consideration an assumed value for power site purposes?

A. In the first one, yes, sir.

Q. And if it did not have any such value for power site purposes would your assessment have been anywhere near as high as——

Mr. Noble: If Your Honor please, I object at this time to the question for the simple reason that after the time for [47] equalization has gone by the assessments are fixed and there was no appeal from that assessment and there was no action brought here for the reduction of the taxes.

The Court: I will hear from you, Mr. Stoutemyer.

Mr. Stoutemyer: We are not questioning the amount of taxes but to letting the question of assessed valuation go to the jury when that assessed valuation was for an assumed value which does not exist.

The Court: Well, isn't this the situation? You haven't any right to attack the assessment in these proceedings. Furthermore, won't I be compelled when

(Testimony of W. R. Hall)

I get all through to hold that the assessed value is not a measure by which the amount of compensation is to be determined and consequently you can't be harmed by it. It is one of these instances where testimony is necessarily incidental only for the county to prove the amount of their assessments.

Mr. Stoutemyer: With that understanding, that the jury will be instructed that the assessed valuation has nothing to do with the verdict that they should render in this case, I would withdraw the objection.

The Court: I am not going into any——

Mr. Herman: Your Honor, I am not sure that Mr. Stoutemyer understood Your Honor's statement. I am not sure that that would be the proper instruction to give, that the assessed valuation would have nothing to do with the value to be placed in this case.

The Court: Well, it is my understanding that it is customary to instruct juries in condemnation cases that the assessed value is not to be considered as any measure. It is my present understanding of the law that if Mr. Hall was [48] called as a witness to prove the value of it in your case that I would sustain the objection to the testimony. However, if you don't agree with that theory, maybe Mr. Stoutemyer better be permitted to go ahead with the understanding that he is trying now a question between the government and The Washington Water Power Company and not a question be-

(Testimony of W. R. Hall)

tween the government and Ferry County, because he can't raise that issue against the county.

Mr. Herman: Probably, as far as this case is concerned, it is probably primarily a question between the government and the county, and that being so we will not at this time make any objection to the conditions under which it is admitted.

The Court: I will sustain the objection. Any further questions, Mr. Stoutemyer?

Mr. Stoutemyer: No further.

Witness Excused

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L. J. O'CONNELL,

called and sworn as a witness on behalf of the Defendant Ferry County, testified as follows:

Direct Examination

The Court: Q. Your name is L. J. O'Connell?

A. Yes, sir.

Q. Where do you live, Mr. O'Connell?

A. Republic.

Q. And what is your business?

A. County Treasurer, Ferry County.

Mr. Noble: Q. How long have you been County Treasurer, Mr. O'Connell?

A. Since about the 15th of January, 1939. [49]

Q. Mr. O'Connell, it is one of your duties to collect taxes? A. Yes, sir.

(Testimony of L. J. O'Connell)

Q. Mr. O'Connell, are you familiar with the land in controversy here, being land in Lots 1, 2, 3 and 6, I believe, in Section 11, Township 36, Range 37? Am I correct in that, known as The Washington Water Power Company land?

A. Yes. I think it is Lots 1, 2 and 6. You had an extra one in there.

Q. Have you any record of the taxes paid there?

A. Yes, sir.

Q. For the year 1939, being what is known as the 1940 tax? A. Yes, sir.

Q. How were those rolls certified to you for the year 1940, the 1940 tax, being the assessment for 1939?

A. Well, they were assessed against The Washington Water Power Company in the total amount of 134.8 acres of unimproved land valued at \$25,000 and located in School District 9, Road District 2, with a total tax of \$1,050 and a fire patrol tax, \$4.38, total tax, \$1,054.38.

Q. Were those taxes or any part of them ever paid, Mr. O'Connell?

A. They were paid—Part of them were paid in 1941, this year, 1941.

Q. And what part of that tax was paid, Mr. O'Connell?

A. The taxes were paid by The Washington Water Power Company on part of Lots 1, 2 and 6, being 90.57 acres, a total tax of \$13.60 and the

(Testimony of L. J. O'Connell)

fire patrol tax of \$4.38, leaving a balance due and unpaid Ferry County.

Q. In what sum? [50]

A. Something over a thousand dollars, I believe.

Q. Do your figures show there the amount—  
1033, or whatever it is? A. It doesn't show—

The Court: Doesn't it show the total?

Mr. Noble: Q. What was the total tax assessed for that particular year?

A. For 1040 or '41?

Q. The 1940 tax.

A. One thousand fifty dollars and the fire patrol tax of \$4.38.

Q. And what part of that was paid?

A. Thirteen dollars and sixty cents and the fire tax, \$4.38.

Q. Leaving a balance of approximately what—  
\$1033? A. About that, yes.

Q. Have you a certified copy of your assessment sheet for the years 1939 or '40, or your tax rolls for '40 and '41? A. Yes, sir.

Q. Will you give me the 1939. (Done)

Mr. Noble: (Counsel addressing clerk) Will you mark this for identification. (Exhibit marked Defendant Ferry County's Exhibit 3 for identification.)

The Court: One thousand forty-six dollars and forty cents? Is that right?

Mr. Keith: That is what I figure.



(Testimony of L. J. O'Connell)

Mr. Noble: Q. This is a copy of your 1941 tax roll? A. Yes, sir.

Mr. Noble: At this time we offer this in evidence, Your Honor, that is, Defendant's Exhibit 3, Defendant Ferry County's [51] Exhibit, showing the tax roll for the year 1939, for the 1940 tax assessed in 1939.

The Court: Any objection?

Mr. Keith: No.

The Court: It will be admitted.

Whereupon, a Tax Roll, marked for identification Defendant Ferry County's Exhibit No. 3, was received and admitted in evidence and is hereto attached and made a part hereof.

Mr. Noble: At this time we offer in evidence Ferry County's Exhibit No. 4, showing the apportionment of taxes and so forth and the amount paid.

Mr. Keith: No objection.

The Court: It will be admitted.

Whereupon, the exhibit showing the taxes paid, marked Defendant Ferry County's Exhibit No. 4, was received and admitted in evidence and is hereto attached and made a part hereof.

Mr. Noble: At the time those taxes were paid, did you issue a receipt for them? A. Yes, sir.

Q. At that particular time of year the 1939 taxes had become delinquent taxes?

(Testimony of L. J. O'Connell)

A. Yes, sir.

Q. Have you a certified copy of that receipt there, Mr. O'Connell? A. Yes, sir.

Q. Showing the amount paid by The Washington Water Power Company? A. Yes, sir. [52]

Q. What amount does it show they paid at the time they paid it, including interest?

A. They paid a tax of \$16.80, \$4.38 fire patrol, and \$1.34 interest, a total of \$22.52.

Q. And what date was that paid?

A. April 21, 1941.

Mr. Noble: (Counsel addressing clerk) I wish you would mark that.

(Certified copy of tax receipt was marked Defendant Ferry County's Exhibit 5.)

Mr. Noble: Q. No payment other than those you have receipted have been paid on the taxes assessed in 1939, other than those shown by those receipts? A. No, sir.

Mr. Noble: That is all.

The Court: Any objection?

Mr. Keith: No.

The Court: Exhibit No. 5 is admitted.

Whereupon, the Certified Copy of Tax Receipt, marked Defendant Ferry County's Exhibit 5, was received and admitted in evidence and is hereto attached and made a part hereof.

Mr. Paine: May I ask a question? (Q.) As I understand you, Mr. O'Connell, the total tax on

(Testimony of L. J. O'Connell)

this property before any filing of declaration of taking by the government, which was the entire uplands of Lots 1, 2 and 6, was \$1050?

A. Yes, sir.

Q. Then after the filing of the condemnation proceedings and the acquisition of title by the government, there was a segregation made in the tax on the two parcels of land? Is [53] that right?

A. Yes, sir.

Q. And the tax remaining on the portion of the land not taken by the government was \$13.60? Is that right?

A. Yes, sir.

Q. Plus the fire tax?

A. Yes, \$16.00 and whatever it is there on the receipt.

Q. And that subsequently was paid by The Washington Water Power Company?

A. Yes, sir.

Q. And what you are talking about, this figure of \$1036.40, was the segregated part of the tax levied against the property which has been submerged and taken by the government?

A. Yes, sir.

The Court: Any questions, Mr. Keith or Mr. Stoutemyer?

Mr. Stoutemyer: No questions.

Mr. Noble: That is all. That is Ferry County's case, Your Honor. [54]

DEFENDANT STEVENS COUNTY'S  
CASE IN CHIEF

CHESTER A. HILLS,

called and sworn as a witness on behalf of the Defendant Stevens County, testified as follows:

Direct Examination

The Court: Q. Your name, please.

A. Chester A. Hills.

Q. Where do you live?

A. I live at Colville.

Q. What is your official position, please?

A. Stevens County Assessor.

Mr. Grinstead: Q. How long have you been Assessor of Stevens County?

A. Nearly seven years.

Q. How long have you been connected with the Assessor's office? A. Since 1924.

Q. As such Assessor you are charged with making assessments on real and personal property of Stevens County? A. Yes, sir.

Q. You did that in 1939? A. Yes, sir.

Q. You are acquainted with the land in Sections 11, 12, 13 and 14, Township 36 North, Range 37, EWM., owned by The Washington Water Power Company? A. Yes, I am.

Q. You made the assessment on those lands in 1939? A. I did, yes.

Q. And extended the tax rolls? [55]

A. Yes, sir.

(Testimony of Chester A. Hills)

Q. After December 9, 1939, was there a segregation of the uplands and the taxes assessed upon those lands? A. Yes, sir.

Q. Why was that made, Mr. Hills?

A. This certificate of taking was filed with the auditor and then they requested a segregation of the uplands.

Q. On what basis did you make that segregation?

A. On the map furnished by the Bureau of Reclamation.

Q. And that segregation included in one part the land that was taken in this order of condemnation within the basin of the Columbia dam project?

A. Yes.

Q. And on the other the lands outside of that that were still retained by The Washington Water Power Company? A. Yes.

Q. Have you made a copy from the tax rolls showing the description of the land, the amount segregated as to valuation and taxes, respectively, between The Washington Water Power Company and the part taken in this order of appropriation?

A. Yes.

Q. You may state what that is, Mr. Hills.

A. This segregated the value between the land taken by the Reclamation Bureau and what remained to The Washington Water Power Company.

Q. That is taken from the tax rolls of Stevens County, is it? A. Yes.



(Testimony of Chester A. Hills)

Q. And it is certified to by you as County Assessor [56]      A. Yes, sir.

Mr. Stoutemyer: We have no objection to the showing as to the amount of taxes. That, we think, is the only part of this exhibit that is material and we do object to the showing of a valuation for the reason that it includes elements which are not proper for consideration and because the assessment is not proper evidence at all as to its valuation.

The Court: On the same basis as I overruled the objection on the matter of the defendant represented by Mr. Noble, I will overrule your objection and it may be admitted.

Mr. Grinstead: We offer Stevens County's Exhibit No. 1.

The Court: Admitted.

Whereupon, a segregation of the assessed values of land assessed to The Washington Water Power Company, marked for identification Stevens County's Exhibit No. 1, was received and admitted in evidence and is hereto attached and made a part hereof.

### Cross Examination

By Mr. Stoutemyer:

Q. Is your estimate of the valuation on this land made on the supposition that the land was valuable for dam site or power site purposes?

A. Yes, on the portion there that was taken by

(Testimony of Chester A. Hills)

the Reclamation. Of course, in the first assessment it was all included together.

Q. But that first assessment was valued on the supposition that it had value for dam site and power site purposes? A. Yes.

Q. And if it did not have such value your assessment would have been very much lower, would it not? [57] A. Yes.

Mr. Stoutemyer: That is all.

Mr. Paine: Q. You made the assessment yourself?

A. Well, in some instances I tell the deputies.

Q. Yes, but under control of your office?

A. Yes.

Q. And these figures are on the basis as required by law, fifty per cent of the real value, are they not? A. Supposed to be.

Q. And under the law you are sworn to assess the property at a figure that in your judgment represented its real and true value—fifty per cent of its real and true value, weren't you?

A. Yes, sir.

Q. You attempted to do that? A. Yes, sir.

Q. You have been familiar with that land up there for a great many years, haven't you?

A. Yes, sir.

Q. It has been assessed on the basis of having a market value for power site purposes during all of that time, hasn't it? A. Yes.

Mr. Paine: That is all.

Mr. Grinstead: That is all, Mr. Hills. [58]

MIRIAM MILLER,

being first duly sworn was called as a witness on behalf of the Defendant Stevens County and testified as follows:

Direct Examination

The Court: Q. Your name is Miriam Miller?

A. Yes, sir.

Q. Is it Miss Miller or Mrs. Miller?

A. Miss Miller.

Q. And where do you live? A. Colville.

Q. And your occupation?

A. My occupation is deputy treasurer.

Mr. Grinstead: Q. How long have you been connected with the treasurer's office?

A. I have been connected in Stevens County since the 13th of May, 1935.

Q. I believe before that time you were with the treasurer's office somewhere else?

A. Yes, I was, in Okanogan County.

Q. You are familiar with the tax rolls of Stevens County? A. Yes, sir.

Q. And with the rolls covering Sections 11, 12, 13 and 14, Township 36 North, Range 37, EWM., formerly owned by The Washington Water Power Company? A. Yes, sir.

Q. I believe you prepared a statement—You know about a segregation of uplands and taxes that was made upon that land after the 9th day of December, 1939? A. Yes, sir. [59]

(Testimony of Miriam Miller)

Q. And I believe you have made a statement of those aggregations and values as to taxes?

A. As to taxes, yes, sir.

Q. You may state what that shows, Miss Miller.

A. This is a copy of the 1940 taxes that were due and delinquent and unpaid at this time against land owned by The Washington Water Power Company in Sections 11, 12, 13 and 14, Township 36 North, Range 37, together with the interest figured up to date and the outstanding fire patrol tax, and it also shows the amount paid by The Washington Water Power Company on property in the same section, property in the same section that they retained and on which they paid the taxes.

Q. The first item of delinquent taxes is the lands that were segregated as coming within this order of condemnation?

A. Yes, sir.

Q. And the latter amounts cover the land that The Washington Water Power Company retained and on which they paid the taxes?

A. Yes, sir.

Q. You certify these as Deputy County Treasurer as being a true and correct copy of the rolls?

A. Yes, sir.

The Court: Any objection?

Mr. Keith: No objection.

The Court: Mr. Grinstead, will you tell me how much the tax on the portion that comes under the Reclamation is?

Mr. Grinstead: As shown by this statement?

(Testimony of Miriam Miller)

The Court: Yes.

Mr. Grinstead: The delinquent tax is \$1949.14. There [60] is \$1.62 forest patrol, and as Miss Miller has stated, the interest computed up until today is \$203.18, making a total of \$2,153.94.

Mr. Paine: That is all.

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Mr. Grinstead: At this time I wish to thank the Court and counsel here for extending us the courtesy or permitting us to put on our testimony at this time and permitting us to get away.

The Court: Now, when are you going to argue the legal questions involved in your aspect of it?

(Brief discussion on this point omitted)

Mr. Noble: Very well, we can be here tomorrow morning or any time suitable to the rest of them.

(Further discussion on same point omitted)

The Court: Well, come back in the morning and argue this thing out and we may as well get it out of the way.

(Whereupon, the jury was excused until 10:00 A. M. on September 16, 1941, and the case was adjourned until 9:30 A. M. on September 16, 1941, when the tax question was argued by counsel, at the conclusion of which the following comment was made by the Court:)

The Court: Mr. Noble and Mr. Grinstead, if in going into this matter I believe that you should have



opportunity for further argument, I will notify you. I am not agreeing that under all circumstances that if I should find the counties were not entitled to recover I will notify you, but if any matters should come up in this case—if after reading again the cases that Mr. Noble cited, I believe you would care to have further notice to argue I will notify you.

Mr. Noble: Very well, Your Honor.

The Court: We will get the matter out of the way at the present time. [61]

(Whereupon, the jury was brought in and the following proceedings were had:)

The Court: Gentlemen of the jury, those of you who served last week in the case of *Berry vs. The Great Northern Railway Company* will remember that I explained the use in the new rules of Federal procedure for pre-trial procedure. For the benefit of those who didn't serve on that case I will go into the matter again. In 1938, as a result of a considerable expenditure of time and effort by a committee appointed by the Supreme Court of the United States, there was presented to the Congress a new set of rules for Federal procedure and those rules became effective at the adjournment of Congress of that year. The purpose of the adoption of the rules was the expediting of business in Federal court. Among the rules was Rule 16, which gave to the Court the power to call in all of the counsel and the parties in various cases and to require of them to discuss all the issues in the case,

the purpose being to shorten the time of trial, to eliminate from trial all arguments about issues which are really not in controversy, and to enable the jury and the Court to decide the cases purely upon those issues which were in controversy. Now, those rules are not applicable in cases such as this, condemnation cases. Several months ago I asked counsel in this case to come in and discussed with them the possibility of stipulating, and even though this was a condemnation case that they try to work out a pre-trial arrangement among them, and counsel on both sides were very cooperative and as a result a stipulation has been worked out and signed by the parties which I think unquestionably will shorten this trial by at least two weeks, and the [62] first thing I want to do in the case is read to you this stipulation. This stipulation is a part of the file and if from time to time during the course of the trial you should, as individuals, want me to re-read portions of this stipulation, don't hesitate to express that desire. It is long and you can't be expected to carry all of it in your minds at all times during the trial.

(Stipulation dated July 2, 1941 which appears at page 43 of this record on appeal read to the jury)

The Court: Dated July 2, 1941 and signed by all the attorneys.

Mr. Stoutemyer: I suggest at this time that there is also another stipulation on file in which the par-

ties have agreed to the value of the Hummel tract.

Mr. Keith: That has not been filed yet.

The Court: Mr. Keith said yesterday it just got back into his office yesterday.

Mr. Keith: Yes, it did. It may be filed at the present time. However, I think there are two stipulations, one between The Washington Water Power Company and the plaintiff and one between Lillian C. Hummel and the plaintiff.

The Court: This one between the plaintiff and The Washington Water Power Company reads as follows:

(Stipulation dated August 21, 1941 which appears at page 55 of this record on appeal read to the jury)

The Court: Dated August 21, 1941 and signed by all of the attorneys. Isn't that sufficient, so far as reading to the jury is concerned? The other stipulation is between Mrs. Hummel and the Government and is to the effect merely—In addition to the stipulation signed by The Washington Water Power Company—

Mr. Keith: Merely an agreement by her that the value deposited is the true value.

The Court: I won't read that one. [63]

(The Court omitted reading the following stipulation:)

“It is hereby stipulated and agreed by and between petitioner, United States of America, and the defendant Lillian C. Hummel as follows:

(1) That the petitioner herein on December 9, 1939 filed its petition for condemnation of the certain premises, easements and rights therein described.

(2) That on December 9, 1939, the petitioner filed a declaration of taking vesting title to the certain premises, easements and rights described in the petition in the United States of America and judgment on declaration of taking was entered and adjudged in the above-entitled court on December 9, 1939.

(3) That included in the lands the title to which was acquired by the petitioner in the above entitled proceedings is the following described tract situated in the County of Stevens, State of Washington, to-wit:

Tract No. 2

(Hummel Tract)

A tract of land containing 21.27 acres, more or less, lying and being in the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the east line of the Southeast Quarter of the Northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13), which point bears North  $86^{\circ}09'57''$  east 2568.16 feet and North  $03^{\circ}38'34''$  West 247.27 feet from the quarter section cor-

ner on the west line of said Section thirteen (13); running thence North  $64^{\circ}49'10''$  West 95.80 feet; thence North  $74^{\circ}52'50''$  West 393.47 feet; thence North  $63^{\circ}23'20''$  West 522.80 feet; thence North  $33^{\circ}14'50''$  West 307.77 feet; thence North  $26^{\circ}06'00''$  West 413.09 feet to the point of intersection with the north line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence north  $85^{\circ}45'25''$  East 1197.80 feet to the northeast corner of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13); thence south  $03^{\circ}38'34''$  East 1105.80 feet along the east line of the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13) to the point of beginning.

(4) That the tract described in Paragraph 3 above on the date of the taking was owned by the defendant Lillian C. Hummel, a spinster; that the estimated fair market value of the said tract was \$241.35; and that said amount was deposited with the Clerk of the above-entitled court by the petitioner as com- [64] pensation for the taking of said premises.

(5) That the United States has a right to condemn said premises for the purposes set out in said petition.

(6) That the fair market value of said premises together with any and all damages



which have been sustained or may be sustained by all persons whatsoever by reason of the condemnation and taking thereof by the United States is the sum of Two Hundred Forty-one and 35/100 Dollars (\$241.35).

(7) That judgment shall be entered herein pursuant to the provisions of the statutes of the United States and of the State of Washington, where followed by conformity, ascertaining and establishing that the compensation to be paid by the United States of America in the above-entitled action for the condemnation and taking of the above-described premises shall be in amount set forth in the preceding paragraph hereof.

(8) That a judgment of condemnation shall be entered herein as to said premises and as to the ownership of said premises by the defendant Lillian C. Hummel, a spinster, adjudging that the public use requires the condemnation thereof, confirming the title of the United States in fee simple thereto and releasing the United States from any other and further liability on account of the condemnation and taking of said premises.

(9) That the said judgment shall provide that no clerk's fees, commission or poundage shall be charged upon or against said award or any part thereof; that no interest shall be allowed on the amount of such award, either before or after the date of such judgment.

(10) That a judgment shall be entered herein directing the payment of Two Hundred Forty-One and 35/100 Dollars (\$241.35) to the defendant Lillian C. Hummel, a spinster, less unpaid [65] taxes, if any.

Dated this 10th day of August, 1941."

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(Whereupon, Mr. Stoutemyer made an opening statement to the jury on behalf of the United States, after which the following proceedings were had:)

The Court: Do you care to make a statement, Mr. Paine?

Mr. Paine: I would like to reserve our statement until the close of the Government's case.

(Whereupon, counsel for Ferry County and Stevens County were excused from further attendance.)

Mr. Stoutemyer: As the Court knows from my statement to the jury, we consider that the material facts, with possibly one or two points of minor importance, have been fully determined by the stipulation. The two points which I have in mind I think possibly counsel will agree to, and thus eliminate the time which would be required in offering evidence on them. The first is that the Grand Coulee Dam will improve navigation on the Columbia River to a very substantial extent. The stipulation does not quite cover that point.

The Court: No. I noticed that since we had our meeting the other day. The stipulation in Paragraph 2, it is stipulated the Columbia River is a navigable stream, and in Paragraph 11, "that the plaintiff has the right to condemn the said land for the purposes named in the complaint." Now, the purposes named in the complaint are navigation, flood control and so forth. There is nothing in the stipulation to the effect that this dam would effectuate the purposes named in this complaint and it seems to me that that is an issue which still remains open under the stipulation, unless counsel wants to [66] further stipulate.

Mr. Stoutemyer: We are prepared to prove that unless counsel is willing to agree that that is true.

Mr. Paine: Well, our position, if the Court please, on that is, that it is wholly immaterial and irrelevant to this case, under the doctrine laid down in the Monongahela Navigation Company against the United States, that there it was stipulated that the United States had the right to acquire his property by eminent domain proceedings it doesn't make any difference whether they are taking it to build a post office on it or overflow it or build a post road, as they point out in the Monongahela case, or whether they take it to improve a navigable highway such as a navigable river.

The Court: Then you are not willing to stipulate?

Mr. Paine: No, Your Honor.

Mr. Stoutemyer: I will call Mr. Banks.

## PLAINTIFF'S CASE IN CHIEF

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FRANK A. BANKS,

being first duly sworn, was called as a witness on behalf of the Plaintiff and testified as follows:

## Direct Examination

The Court: Q. Your name is Frank A. Banks?

A. Yes, sir.

Q. Where do you live, Mr. Banks?

A. Coulee Dam, Washington.

Q. And your position, please?

A. Supervising Engineer for the United States Bureau of Reclamation, in charge of the construction of Grand Coulee Dam. [67]

Mr. Stoutemyer: Q. How long have you been in charge of the construction of the Grand Coulee Dam?

A. Since August 1, 1933, when the work started.

Q. Are you familiar with the plans of that dam and with the construction of the dam?

A. I am.

Q. Do you know what the effect of that dam will be in regard to backing up the water of the Columbia River, storing the flood water, and what the effect of the release of that flood water will be on navigation below the dam?

Mr. Paine: Now if Your Honor please, for the record, at this time I object to this question as being incompetent, irrelevant and immaterial to the sole issue in this case, as I see it, which is, what is

(Testimony of Frank A. Banks)

the just compensation to be paid for the lands of the Washington Water Power Company.

The Court: Objection overruled, exception allowed.

Mr. Paine: Exception, please. I understand that probably the new Federal Court rules don't apply to this eminent domain proceeding.

The Court: I am afraid not.

Mr. Paine: I don't want to irritate Your Honor by taking exceptions, but I think probably the new rules don't apply to this sort of proceedings and in the record we are going to have to try to remember each time to except to each legal ruling.

The Court: Yes. In order to be safe I assume you will have to do that. I wish we could all stipulate between ourselves that it would not be necessary to take exceptions but I guess that could not be done.

Mr. Paine: Yes. I wish we could do it because it is something that is easy to forget. [68]

Mr. Keith: The Government would be willing to make such a stipulation.

The Court: I wouldn't even ask counsel to do it because I am afraid the circuit court might say that could not be done.

Mr. Paine: So the record shows our exception?

The Court: Yes.

Mr. Stoutemyer: I presume you will agree the record may show that Mr. Banks is qualified as an engineer to answer the questions that I have asked him?



(Testimony of Frank A. Banks)

Mr. Paine: Yes, I will agree to that.

Mr. Stoutemyer: Q. Mr. Banks, what if any effect will the Grand Coulee Dam have in improving navigation on the Columbia River?

Mr. Paine: That is objected to on the same grounds.

The Court: Same ruling.

Mr. Paine: Exception.

A. It raises the water level at Grand Coulee about 355 feet and backs the water up the Columbia River to the Canadian border, a distance of about 151 miles and for a considerable distance up several of the tributaries. Furthermore, by storing the flood waters it improves to some extent the flood conditions on the river and releasing those flood waters during the low period of the river, the period of low flow, it raises the low water level of the river between Grand Coulee Dam and the mouth of the Snake River approximately four feet and between the mouth of the Snake River and Bonneville about two feet, thereby improving navigation to that extent.

Mr. Stoutemyer: Q. Does the backwater above the Coulee Dam create a navigable lake between the dam and the Canadian line? [69]

Mr. Paine: Objected to on the same grounds.

The Court: Objection overruled, exception allowed.

Mr. Paine: Exception.

A. It does.

(Testimony of Frank A. Banks)

Mr. Stoutemyer: Q. Is that lake navigable by steamboats of considerable capacity?

Mr. Paine: Objected to on the same grounds and the additional grounds that it doesn't make any difference about the size of the steamboats, but primarily on the ground stated.

The Court: I think there is materiality to the last part.

Mr. Stoutemyer: All right. We will withdraw that question. That is all.

Mr. Paine: No questions.

Witness Excused.

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Mr. Stoutemyer: Now, the only other evidence we wish to present other than what has been agreed to in the stipulation is to offer in evidence as an exhibit one document, a copy of which we have filed with the clerk, which is a photostatic copy of the order made by the Federal Power Commission denying the application of The Washington Water Power Company for a license.

The Court: I will say this, Mr. Stoutemyer: As you know, we had an informal conference before you came over, last Friday, and both Mr. Keith and Mr. Paine and Judge Herman submitted a large number of authorities to me, which I have read. They indicated that that was going to be a question. I have a feeling that the question of the ad-

missibility at this time of that order is going to be so involved in the argument which I anticipate will be made at rather great length, that from my [70] reading of the cases I think it would be desirable from the point of view of both sides if I would reserve a ruling upon that question until after I have heard the argument upon the question of the admissibility of evidence as to power site value, and if there is no objection by either side, make your offer of proof and have Mr. Paine make his objections and I will then reserve ruling until after I have decided on the other question.

Mr. Stoutemyer: That will be agreeable.

The Court: You make an offer.

Mr. Stoutemyer: We make an offer.

Mr. Paine: I think he should get it out and have it identified for the sake of the record.

(Sealed document opened by Clerk and marked as Plaintiff's Exhibit A.)

Mr. Stoutemyer: We offer in evidence the document marked Plaintiff's Exhibit A.

Mr. Paine: To which defendants object on the ground it is incompetent, irrelevant and immaterial to the proof of the issue in the case, namely, the just compensation and the fair market value of this property on the date of the taking in this proceeding.

The Court: I will reserve the ruling until after I have decided the question of the admissibility of evidence on the value of the power site.

Mr. Stoutemyer: That will be the only evidence

that we will offer unless the Court should rule that testimony in regard to power site value is admissible, in which event we would have the privilege of meeting the claims of the defendant on that issue.

[71]

The Court: Plaintiff rests?

Mr. Stoutemyer: We rest.

The Court: Plaintiff rests subject to the right to reoffer Plaintiff's Exhibit "A" after the Court has ruled upon the admissibility of certain of defendants' testimony.

Plaintiff Rests.

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Mr. Paine: Now, if Your Honor please, I am just wondering what might be the best method of procedure. I could make an extended opening statement to the jury here outlining a lot of our evidence, and of course, the question of the admissibility of that evidence is the primary legal question involved here. Wouldn't it be better perhaps to proceed at this time with the legal argument on the issues involved? I think Your Honor has them pretty well in mind but I can outline in that argument generally what is the character of the testimony we are going to present, and dispose of that legal question, and then if Your Honor holds one way we will have to put in testimony and will know what will be admissible. Then I can proceed to make my opening statement.

Mr. Stoutemyer: That will be satisfactory to us, if agreeable to the Court.

(Whereupon, the jury was admonished and excused until 9:30 A. M., on Monday, April 22, 1941, and a short recess was taken at this time, Tuesday, September 16, 1941, after which the following proceedings were had outside the hearing of the jury:)

[72]

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### OPENING STATEMENT OF DEFENDANT

The Court: When you made the suggestion about not making your opening statement, my first reaction was to say no, you should make an opening statement, because it seemed to me if you were asking me to pass upon the admissibility of evidence I should have a complete statement of what evidence you proposed to introduce. However, I realize that if you made an opening statement to the jury today and they didn't come back until Monday, with all due respect to you, they may have forgotten the things you said by Monday, so I decided right on the spur of the moment that I would ask you to make a rather complete statement now, such as you would have made to the jury, of your evidence and then if I rule that the evidence is admissible you can then make it to the jury.

Mr. Paine: Yes, I think that is a good idea. If Your Honor pleases, in compliance with Your Honor's request, I don't believe it will be necessary to go into the details in regard to the qualifications



of the witnesses and such matters that I would have gone into at length with the jury. What Your Honor wants, I assume, is a statement of the position of the company and the evidence that we propose to offer in regard to the value of these lands.

Now, as I conceive the issue, the sole question remaining is the question of the fair market value or the just compensation to be given The Washington Water Power Company for these lands. Our testimony will show that the tract of land involved here and as sought to be condemned by the Government, as appears from the stipulation, is a part of a larger tract of land located at Kettle Falls upon the Columbia River; that [73] these tracts sought to be condemned are what we refer to as the abutment lands or the critical lands in connection with the development of a power site; that due to their characteristics—and we will offer evidence, including maps, pictures and other evidence of that sort, of the nature of the lands themselves; that they consist of a rocky dike or dam, in effect, land stretching across the Columbia River at Kettle Falls made up of a quartzite formation rising rather precipitously on either side of the river and consisting of an island in the center of the river; that across these lands a power development can be readily constructed, all of which is contained in essence in the stipulation; that the nature of the soil, the rocky nature of the soil, is such that it is possible to develop the complete foundation for the building of the dam, the wings and abutment of which lie upon

our lands, the other portion of the dam extending out across the middle of the bed of the Columbia River.

We contend and we will offer evidence that all of the lands that we own are what in law are known as uplands or lands to which we have absolute fee title above the high water mark of the river. We are not contending, and I think Your Honor should have this in mind—we are not contending for any value or any ownership in the raw water of the river as such and the flow of the river as such. We are not contending that we have any vested or inherent right in the bed of the stream or in the flow of the river or that we have any legal ownership in the bed of the stream or in the flow of the river or that we have anything such as was referred to as a hypothetical additional value of the water power on the river. We do contend and will offer proof to show, as I say, that our lands were so situated in relation to the river that they afforded the proper place [74] and the feasible place for the location of a hydroelectric development and the abutments of a hydroelectric plant. We will show further, if Your Honor please, that these lands can be utilized by utilizing the flow of the river and the necessary uplands for over-flow lands at the site of the dam to create a hydroelectric development; that the enhanced market value of these lands has been recognized from the earliest time that the land came upon the market; that the land came upon the market first shortly after the Colville Indian Reser-

vation was opened up in 1906 to settlement or to taking by individuals; that the first sale of the land occurred shortly thereafter, in which the uplands involved in this proceeding were sold for \$80,000 on the market; that the lands were then sold again in 1912 to the Granby Company for use in developing a power site for \$100,000; that thereafter the lands were sold by the Granby Company to The Washington Water Power Company in 1921 for \$150,000.

The Court: This \$80,000 was in contemplation of a dam, was it?

Mr. Paine: The \$80,000 was the market price fixed by the seller, who was Mr. I. N. Peyton and another party who had individually taken the land up, and they were sold to Mr. J. P. Graves, who had in mind ultimately using the land for the development of a power site upon the Columbia River; that the sale to the Granby Company was made upon the basis of their potential value, of their use that could be made of them in developing a power site upon the Columbia River; and that the Granby Company held them for that purpose in connection with the development of their own copper-reducing plant that the Granby Company was operating; that they were then sold to the Washington Water Power Company for the purpose of utilizing [75] them as a power plant in connection with the electric distribution system of The Washington Water Power Company.

We will show, in other words, that private capital has been seeking these lands from the time that

they were first placed upon the market and has been seeking them because the value that they had as part of a developed hydroelectric system or development; that The Washington Water Power Company, after it acquired the titles to the land in 1921, proceeded at once to take the necessary steps to develop the use of this site and bring it into use as a hydroelectric development; that in order to make use of such a site it is necessary, of course, to obtain the right to use the bed of the stream, which under the laws of the State of Washington belongs to the State of Washington. It is necessary to secure the permits to appropriate the waters of the Columbia River from the State of Washington. It is also necessary to secure permission from the United States Government, through the Federal Power Commission, for authority to locate any hydroelectric development or construction of this sort in the stream; and it is necessary to secure ultimately the lands which will be overflowed by the backwater of the dam to create a reservoir for the dam; that the company at once proceeded to take the necessary steps to secure these various permissions to make the necessary development; that it filed at once with the Federal Power Commission an application for a preliminary permit to go ahead with this development; that this preliminary permit was granted by the Federal Power Commission, and that in pursuance of the granting of the preliminary permit the company proceeded to do core drilling, diamond drilling of its own lands to determine the



condition of the rock formation that would be necessary in the base of the [76] dam itself; that they did what is known as wash boring the various types, where the tubes are run down and wash boring is made to determine the depth of the foundation necessary for the construction of the dam; that they proceeded to make all of the necessary surveys for the backwater over-flow to determine where the lines of over-flow would come and the lands that it would be necessary to acquire to make the building of the dam feasible and not raise the water above the Canadian boundary, which was a limiting factor in the development of the dam.

We will show that in addition to that they went ahead with those various steps acquiring this information. They established gauging stations in the stream in order to ascertain the exact amount of flow of the river to figure the type of development of the dam and hydroelectric plant necessary to best utilize the total flow of the river at its high and low water stages; that in the process of doing these various things, from 1921 on, the company has made a total investment in the property, including the purchase of its land, of \$471,653.25 as an indication of the interest of the private power, private capital, in the development of these lands for power site purposes; that it took the necessary steps to secure the state lands; that agreements were made with the State Commissioner of Land for the purpose of securing all the right that the state had in the shore land of the Columbia River and a figure was agreed



upon of approximately \$29,000 for the purchase of the necessary state land; that appropriations of the water were filed with the State Supervisor of Hydraulics; that those appropriations of the waters of the Columbia River had priority over any other appropriations and no other appropriations having been made they were rated and given the necessary priority to use the [77] waters of the Columbia River.

That this activity extended over some considerable period of time; that during the process of development of the site the company also acquired its Chelan site involving Federal Reserve lands at Lake Chelan, and that the matter was taken up with the Federal Power Commission and in the interest of the type of development it was decided between the company and the Power Commission that the Chelan site, which was also a Federal license project, should proceed ahead of the development of the Kettle Falls site but that the Kettle Falls site application was kept in good standing and permitted to remain with all the priorities that it had in the files of the Federal Power Commission; that after development of the Chelan site we ran for a period into the depression and no activity was urged very strongly upon us by the Federal Power Commission towards the building of the Kettle Falls site, but after the depression began to wane in '34 and '35, the company then proceeded to file its application and secure all the necessary information for the Federal Power Commission.

At this time they urged upon us that the fullest development of the site be made, namely, that it be developed to secure a head which would back the water completely up to the Canadian boundary so that all of the fall of the river that could be developed from the Canadian boundary down to Kettle Falls should be developed and that a small project should not be put in that would then make it impossible to locate at any other point north of Kettle Falls below the boundary a plant to develop that additional head or make it impossible for the type of development at Kettle Falls to be expanded or put in an additional head at that point; that the requirements also [78] were that we should take into consideration navigation and provide for the installation of the necessary locks in the dam and the necessary fish ladders to take care of the fish;

That in accordance with their requests in this regard we did a great deal of work in determining the necessary height of the dam and the backwater, all of which was turned over to the Government for their use in connection with the Grand Coulee Dam's backwater and the gauging of the river; that actual estimates, specifications and drawings of the proposed hydroelectric development were made so that the company was ready at the time the property was taken to immediately start construction had not the Grand Coulee Dam been built and the property condemned by the Government.

Then in addition to proving that and the total

amount of the investment of the company in the property, we will offer evidence by competent engineers, qualified engineers who have been engaged for many years in the designing and construction of power projects of this type all over the United States, that, supplementing the stipulation, it is physically possible to construct a feasible and safe dam at Kettle Falls; the testimony of those engineers that such a construction of such a dam is practical from an economic standpoint; the estimates and specifications and drawings of the dam and the costs of the dam showing a preliminary cost to the first stage of the development of that dam of around eight and a half or nine or nine and a half million dollars, the higher stages around \$11,000,000 and the final stage bringing the total cost of the dam up to around \$31,000,000; that this power site, since it is the only one on the Columbia River that is adaptable to development in stages—by that I mean that the for- [79] mation of the land is such at Kettle Falls that you can put in what they call a low dam, a low head to the dam for around \$9,000,000 and develop the power at that point with that head of water; that then, without the necessity of reconstructing or tearing out that dam, it can be increased and raised by two more stages to get in the total ultimate and proper development of that site; that such a situation lends itself to commercial development by private capital very much more readily than the Grand Coulee type of construction or the type further on down the stream at Foster

Creek or any of these other sites where the dam must be constructed at the very beginning to its complete and ultimate development, which necessitates, of course, the outlay of a very materially larger amount of capital before the dam would be put into production and revenue from the sale of hydroelectric energy can be made to pay a return upon the investment; that the installation of the first units of the dam would cost, as I say, around nine and a half million dollars and that the kilowatt-hours to be developed will be at a cost of eighty-six dollars a kilowatt; that this eighty-six dollars a kilowatt is one of the cheapest costs of development or the cheapest price that could be gotten anywhere in the northwest.

That The Washington Water Power Company, due to the rapid increase in population and demand for power and the loads that can be expected in this territory, had reached a point where in 1937 to '39, beginning back in 1937, would have to make provisions for the obtaining of additional power for the supply of its system; that The Washington Water Power Company is interconnected with the other great power systems of this region, the Puget Sound Light and Power, the Idaho and the [80] Montana Power Company and the Pacific Power and Light Company; that the total demand for the interconnected system is such that private capital, especially The Washington Water Power Company, would at that time, but for the taking of the property by the Government in the construction of the



Grand Coulee Dam, have been ready to start upon the construction and would have started the construction of this dam site at Kettle Falls; that in addition to this, we will show that, in the Federal Power Act—the Federal Power Act provides for the licensing of projects upon rivers; provides for the ascertainment of the original costs of those projects, the actual investment that the company has in those projects, as a basis upon which the company can proceed to capitalize or to use their property; that the likelihood of the Federal Power Commission granting these licenses has been such in the past, where the developments have been sound financially and economically, that the owners of that type of property have had an enhanced market value in their property due to its adaptability for this type of development.

We will show, by offering proof here by competent witnesses, such as Mr. J. P. Graves, an expert who has lived in the territory since 1887, who has bought and sold numbers of power sites in this territory, who has been engaged in the construction of many industries and businesses which utilize electric energy; was engaged as director and president for a long time of the Granby Copper Company, which developed three sites in the territory; was head and the moving spirit of the old Spokane and Inland Railroad and bought the Nine Mile site upon the Spokane River; was instrumental in purchasing the site [81] of the present company's plant at Chelan, which is also a Federal licensed project and



includes Government lands, knows the values of power sites in this territory, even where located upon navigable streams and where the question of the necessity of securing a permit from the Federal Government is one of the elements that is taken into consideration between buyers and sellers. Not only is he familiar with these, but he is familiar with the Kettle Falls project in particular, having been one of the early owners of the property and sold it to the Granby Company, and he will place the fair market value of the property, in his opinion, the fair market value of the property on December 9, 1939, in the neighborhood of around half a million dollars. We will offer testimony of other experts, such as Mr. Shay of Wenatchee, who has been in this territory for a good many years. He is acting at this time as right-of-way agent or purchasing agent for the Puget Sound Light and Power Company and is familiar with this type of property. He will testify that he is familiar with the sale of properties involved at the Rock Island dam, which is a dam located upon the Columbia River directly south of Wenatchee in the State of Washington; that the land involved in that site, the uplands, which correspond to the land involved in this site, were purchased and sold upon the open market prior to the obtaining of any license from the Federal Power Commission to develop the site; that the total price paid for them was in the neighborhood of \$120,000 for the site itself; that the site, for agricultural purposes, is wholly valueless, con-

sisting of nothing but bare rock along the sides of the Columbia River and an island in the Columbia River, similar to the situation here; that he is familiar with the fair market value that would be [82] paid for uplands of this type, taking into consideration all of the factors which go to make up the probability or lack of probability that these lands could or could not be used for power site purposes; that they would command and would have commanded upon the market in December, 1939, prior to the taking of the property by the Grand Coulee, a fair market value close to half a million dollars. We will also have the testimony of other experts, Mr. M. O. Leighton of Washington, D. C., who is familiar with the purchasing of these types of power sites throughout the United States for power site lands. Power site values are recognized, even if the ownership of the water is conceded to be in the Government; that the Government itself recognized that type of value in properties located in its reserves or adjacent to its streams; that in his opinion, he is familiar with this site up here; that taking into consideration all of the things surrounding the situation as it exists that these lands had an actual fair market value on the market at about that time in the neighborhood of a half a million dollars or something of that nature, and that therefore the company is entitled to show the fair market value as near as you can in this type of a case by showing the fact that the site itself is adaptable; that the development is one of great

value; that if you owned the power and everything in fee, absolutely apart—if you could obtain private ownership of it—that value would probably be in the neighborhood of about \$3,000,000, and without that ownership and the fact that you only have here your abutting lands, that you have to capitalize your abutting lands in the Federal license, which is part of the proceeding by which you acquire the site, apart from any hypothetical value or any additional value that it may [83] have; that in order to award us just compensation we are entitled to have whatever the jury finds, taking all of those facts into consideration, was the fair market value of those uplands, exclusive of the right to use the river but taking into consideration all of the facts in regard to it. Now, I could give you more in detail the qualifications of the witnesses as engineers, more in detail the specific facts in regard to the amount of power that could be developed, the cheapness with which it could be sold and how it could be applied as we intended to into the system of The Washington Water Power Company, but I don't think that is what Your Honor has particularly in mind. That all goes really to the amount of the award rather than to the fundamental question of whether we are entitled to show to the jury at all that this type of property has that value upon the market, as represented both by our investment in it and by the prices that it could have been sold and transferred for if it hadn't been taken by condemnation.

The Court: All right.

Mr. Paine: In addition to that, we will have, as Judge Herman reminds me, testimony to show that negotiations were had; that the reservoir land could be readily acquired, and we have already stipulated as to the amount of money that would be required to acquire those reserve lands—I think \$3,000,000. We will show also by Mr. Kinsey Robinson, president of the company, that the company was in such financial condition, representing a total valuation of the company around seventy million or seventy-five million dollars, that the company had refinanced its mortgage bonds in the spring of 1939 that it had available and could readily have obtained by the sale of bonds and by the loaning of money from its parent companies the necessary [84] capital to have proceeded with the development, and that the over-flow land could readily have been obtained; that we obtained the over-flow lands of Coeur d'Alene Lake and Lake Chelan, where there were many more different parcels of land, and there were no obstacles in obtaining the over-flow lands that were appropriated, and the building of this site is practical from a feasible and economic viewpoint.

(Brief statement by Court as to the time to be devoted to argument omitted.)

The Court: All right, Mr. Stoutemyer.

Mr. Stoutemyer: Counsel for the defendant has suggested that we take the opening argument and we have no objection to doing so.



Mr. Paine: I thought really that that was proper, that this would come up in the form of an objection to the first question that I would ask the witness.

The Court: All right.

(Whereupon, Mr. Stoutemyer, on behalf of the Plaintiff, argued on the question of the admissibility of evidence as to the value of the property as a power site and so forth, at the conclusion of which an adjournment was taken until Wednesday morning, September 17, 1941, when the same questions were argued by Mr. Paine on behalf of the defendant. At 12:30 P. M., the trial was adjourned until Thursday morning, September 18, 1941, at 9:30 A. M., when the argument by counsel was continued, concluding with argument by counsel on the question of who must pay the taxes due Ferry County and Stevens County, on which issue the Court made the following [85] comment:)

The Court: It seems to me there is only one question involved in this tax matter and that is whether or not the counties here, having been brought in, are entitled to recover their taxes. Clearly, the United States Government has to pay them if anybody has to pay them. . . . There is no question under the statute that there is a valid lien. There is no question under the statute as between the purchaser and seller. If you acquire a property before the 15th of February, then the purchaser has to pay. There is no question but what if the Government hadn't brought these people in they couldn't go into court and sue you, as the Chief Justice



pointed out in the Alabama case. The question is here whether or not, because you have brought them into this case and brought them in before the Court, whether or not they are entitled to assert their claim more than if they had not been brought into this case. . . . You are condemning property under the laws of the State of Washington and the laws of the State of Washington say if you acquire a piece of property prior to February and there are taxes due on it, taxes levied against it, that the purchaser pays the taxes, and if I go out and buy a piece of property and I buy it before the time, then I pay; if I buy it after the time, then the seller pays. . . . I will instruct the jury, then, to return a verdict in favor of the county against the Government for the amount they claim.

(Whereupon, the case was adjourned until 9:30 A. M., on September 22, 1941.) [86]

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(Immediately after the convening of court on Monday, September 22, 1941, the Court read the following written ruling:)

Since by the terms of the pre-trial stipulation the only evidence in the case about which there is serious controversy is defendant's evidence as to power site value, I deem my decision upon the government's objection thereto of sufficient importance to justify my presenting my ruling in writing.

The evidence to which the Government objects was outlined in defendant's counsel's statement of last Tuesday. That there may be no question about what the defendant hopes to prove, I will incorporate that statement in its entirety in this ruling.

To this offer, plaintiff interposes two objections:

1. That under the rule laid down in *U. S. vs. Chandler-Dunbar*, 229 U. S. 53, followed in *Continental Land Co., v. U. S.*, 88 Fed. (2d) 104, (certiorari denied October 11, 1937, 302 U. S. 715) a riparian owner has no property right in the bed of the stream or to the use of the water or the power inherent therein as against the United States and is, therefore, barred from a recovery for any power site value of its riparian lands.

2. That, because paragraph 12 of the pre-trial stipulation includes an admission by defendant that the backwater from a dam constructed at Kettle Falls would flood approximately 518 tracts of privately owned land and approximately 400 different ownerships and would also flood some withdrawn or reserved public land of the United States (including Indian reservation land) and also some State land, therefore defendant is not entitled to recover power site value under the rule that no owner of any one or any number of tracts less than the whole [87] is entitled to be paid for a share of the value of the whole in condemnation proceedings unless there is a reasonable probability that all the ownerships could be combined.

This argument is made despite the fact that in Mr. Paine's opening statement he stated that defendant's testimony would show that reservoir lands could be readily acquired.

The questions involved in the discussion of the plaintiff's objection were thoroughly briefed. Many cases were presented to the Court. I want to assure counsel on both sides that each one of these cases was carefully examined and re-examined and carefully studied and re-studied. I have reached the conclusion, however, that my decision on this point should rest exclusively upon my opinion as to whether or not the Continental Land case is controlling in the case at bar. This is not because the Continental Land case involved the same river and the same government project as are involved here. The importance of the Continental Land case, so far as this case is concerned, lies in the fact that it was decided upon by the Court of Appeals for the Ninth Circuit and that the decision in effect had the approval of the Supreme Court. If the Circuit Court decided the precise questions which are now presented to me, then I am controlled by it. If, on the other hand, it can be distinguished from the case at bar, I feel this defendant should be entitled to complete its record in this trial if for no other reason than to prevent a duplication of the expense of preparation.

Defendant presents the following points of difference between the evidence in the Continental Land case and its proposed evidence in this case:

1. That the lands involved in the Continental case were [88] acquired by their owners for a small consideration with no purpose of using them as abutments in the construction of a dam. It is pointed out here that since the opening of the lands here involved for public settlement, these lands have been repeatedly sold and re-sold on the basis of their value for power site purposes. It is asserted that the testimony will show that the defendant paid \$150,000 for these lands in 1921.

2. In the Continental case, no development work was ever done by the owners looking towards the use of those lands for power site purposes; no application for rights was ever made to the Federal Power Commission; no one of the owners ever spent a cent in an effort to ascertain whether those lands were available for power site purposes. On the other hand, defendant's opening statement outlines an almost continuous activity from 1921 down to 1936 looking towards the ultimate use of the defendant's property for the construction of a dam. Applications were made to the Federal Power Commission, to the State Supervisor of Hydraulics of Washington, negotiations were conducted with the State Land Commissioner of Washington, and engineering and financial surveys were made as a result of all of which expenditures were made by the defendant corporation in a total amount including the cost of acquisition of \$471,653.25.

3. That the geological structure at Grand Coulee where the Continental lands were located was such



that to develop a full use of the project the immediate construction of a high dam was necessary which involved the expenditure of \$170,000,000. By comparison, it is asserted that the geological structure at Kettle Falls was such that an original dam in the amount of approximately \$9,000,000 could have been constructed on which there might later be imposed a higher dam at a cost of [89] \$11,000,000 and upon which there could be superimposed an additionally higher dam at an additional cost of \$11,000,000.

4. That in the Continental case the evidence revealed nothing to indicate either the ability or willingness of private capital to proceed with the construction and development of that enormous project. Defendant asserts that its evidence will prove that it was ready, able and willing to have proceeded with the construction at Kettle Falls had it not been prevented from so doing by the plaintiff.

5. Defendant's counsel states that it is presenting this case on a different theory than that pursued by counsel in the Continental case. There counsel relied upon the "inherent adaptability" theory asking for a verdict in an amount of three to four million dollars on the basis of the ratio of value which the lands used for the placing of the abutments to the dam would bear to the total structure. In this case counsel for defendant contend that they are not claiming any right to the use of the bed of the river or the water flowing over it but are simply asking the value of their lands upon the basis of



what private capital would pay for them in the event they should sell them to private industry seeking to use them in the construction of a private power dam. In that, counsel contend consideration would have to be given to the expenditures which defendant has made such as above described.

It must be apparent to anyone that these constitute real differences between the facts proved in the Continental case and the facts proposed to be proved in this case. The question for me to decide is whether or not the appellate court, in deciding the Continental case, was influenced by any of the facts in that case which were different from the facts in this case. [90] To decide that question, I must look at the opinion of the Court, the briefs of the parties and the transcript of the record on appeal. Each of these I have carefully examined. Let us now attempt to analyze what they contain.

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## APPELLANTS OPENING BRIEF

In their brief the appellants outlined the procedural situation in their statement of the case and outlined appellants' testimony in their statement of the facts. Next we find on Page 15 the following:

### "The Question on Appeal

"The question on this appeal is, whether, on the facts contained in the record, the Court erred in striking Appellants' evidence, and in-

structing the jury not to consider the adaptability of the land for use as a damsite, in determining its market value.”

The assignments of error went to the trial court’s granting of the motion to strike from the record all testimony in regard to the market value of the land in question for damsite purposes, the claims of error as to instructions given and refused and in denying appellants’ motion for new trial and entering judgment for the Government.

The next item in the brief was entitled “Brief of the Argument.” Under this we find the statement that the special adaptability of the lands was conceded. This coincides with the provisions of Paragraph 7 of the pretrial stipulation here.

Next comes the statement of the rule that inherent adaptability of property for special use must be taken into consideration in determining the market value.

The next question raised is in reference to Judge [91] Webster’s ruling and the reasons stated therefor. Appellants contended that the mere fact that appellants did not own or have a license to the river bed does not exclude evidence of special adaptability. In support of that, the appellants there cited the same cases as are cited by defendant here starting with *Mississippi & Rum River Boom Company v. Patterson*, 98 U. S. 403 down to *Olson v. United States*, 292 U. S. 246. The appellants then contended that the fact that they did not own or have the

right to use the flow of the river did not exclude evidence of special adaptability. In support of that they relied upon the same cases as they had cited on the previous point except that they added thereto the case of *United States v. Chandler-Dunbar Company*, 229 U. S. 53.

The third point was that the fact that the Columbia River is navigable and that the Government was taking appellants' land in the aid of navigation did not exclude evidence of special adaptability. In support of that, they cited the same group of cases and added *Boston Chamber of Commerce v. Boston*, 217 U. S. 189.

The appellants then concluded their brief statement of their argument with the point that the improvement of navigation was not in the case and added then the citation of *Monogahela Navigation Company v. United States*, 148 U. S. 312.

Appellants then proceeded into a detailed argument of the points which I have just outlined. While the language that they used was different, I am convinced after careful study of it that, in its fundamental effect, the appellants presented there precisely the same argument as has been so ably presented by defendants' counsel here. While they cited other cases which have not been cited to me and while they failed to cite some [92] of the cases which counsel has cited to me, it is apparent that the cases upon which they mainly relied were precisely the same cases upon which defendants rely

here—Mississippi River Boom case and the Monongahela Navigation case, *Olson v. United States* and that portion of the Chandler-Dunbar opinion in which allowance for canal and lock purposes was approved by the Supreme Court. Of particular importance is the statement of summary and conclusion found on Page 66 of their brief as follows:

“Summary and Conclusion

1.

“We Believe That It Is Fair to State That the Following Facts Are Established Either By Admission or By Competent Evidence.

“1. That Appellants’ lands, which are taken in these proceedings, are uplands, situated above ordinary high water mark.

“2. That Appellants’ uplands possess inherent adaptability for use as a damsite.

“3. That they are the only lands in existence which are suitable and available for a damsite useful for the development of hydro-electric Power, and for irrigation, by using Grand Coulee as a storage reservoir.

“4. That these uses can be accomplished only by building a dam across the Columbia River at Grand Coulee and that no such dam can be built without using appellants’ lands.

“5. That, at the time of taking there was a market for appellants’ lands for use as a damsite by others than the Government, and that there was a ‘legal and practical possibility’

of their being acquired and used for that purpose.

“6. That, the market value of these lands was greatly increased because of their adaptability for a damsite, and that their market value can not be determined except by considering such adaptability.”

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We next come to the

#### APPELLEE'S BRIEF

Here we find a detailed statement of the evidence which [93] includes the full statement of Judge Webster in deciding the case in this Court.

Next comes the appellee's brief statement of its position found on Pages 25-29 inclusive of appellee's brief. In that brief the Government made three contentions:

First, that Judge Webster's decision was correct on the proposition that the Government's paramount right, title and control of the beds and waters of navigable streams would defeat any claim of a riparian owner to the value of riparian upland lands for use as a damsite. In support of that decision, the Government relied upon the Chandler-Dunbar case, the case of Lewis Blue Point Oyster Co. v. Briggs, 229 U. S. 82; Ashwander v. Tenn. Valley Authority, 297 U. S. 288. On this point the authorities relied upon by the Government are the same as those relied upon by the Government here



except that they now have added the case of *U. S. v. Appalachian Electric Power Co.*, 311 U. S. 377, which had not at that time been decided.

Appellee's second point was an attack upon the Continental Land Company's witnesses because they were not qualified as experts.

Appellee's third contention was that diversity of ownership and the large number of tracts which would necessarily be flooded defeated Continental Land Company's claim on the theory that where it was necessary to combine ownership of different properties in order to create a value, such value would not be permitted to be used as a basis for compensation of a claim in a condemnation action. In support of that point, the Government relied upon precisely the same cases as have been presented to me by Mr. Stoutemyer.

So far as I have been able to analyze appellants' reply [94] it was, in effect, merely a re-statement of the arguments presented in its opening brief.

The next question, then, is what did the Circuit Court of Appeals decide? Briefly stated, that Court sustained the position of the Government as to its first point. It ignored the Government's second point. As to the third point, the Circuit Court sustained the position of the Government that the lands had no inherent value for the purposes claimed because there was no evidence of reasonable probability of the combination of these lands with other necessary lands which would be required to complete the project for private use. However, on this

point the Circuit Court did not go as far as counsel for the Government contended there or contends here. It chose to follow the rule laid down in *McCandless v. United States*, 298 U. S. 342, in which it was held that the fact that such use can be made only in connection with other lands does not necessarily exclude it from consideration if the possibility of such connection is reasonably sufficient to affect the market value. In writing the opinion for the Circuit Court, Judge Neterer outlined in extraordinary detail the facts of and the background for that case. He quoted at length from the decision of Judge Webster and concluded that quotation with the statement: "The Court could well rest affirmance upon the statement of Judge Webster in striking from the jury's consideration the evidence relating to damsite value." However, Judge Neterer saw fit to proceed with a further discussion of the Government's first point citing various cases and concluded with this language:

"No persuasive merit is impressed by argument that the court in this case was dealing with water power as a separate unit of property and inherent [95] adaptability of the land ('hypothetical additional value') as here contended for was not considered. All the expressions of the court in relation to each other, considered as a whole in disposition of the issue before it, are to the contrary.

"It is axiomatic that if the riparian owner has no right to approach the river as against

the right of navigation, he has no inherent right of value 'adaptable to special use' over and above the reasonable market value of the upland for any purpose to which it may reasonably be adapted now, or in a reasonable time in the future. This was fairly submitted to the jury. This issue is no newly created relation or right, but has existed long prior to the private ownership in the land. The rights were fixed and relations established by the adoption of the Constitution."

The remainder of Judge Neterer's opinion is directed to the third point presented by the Government upon the question of diversity of ownership. It was in the consideration of this point that Judge Neterer, for the first and only time, discussed the facts of that case insofar as those facts differed from the facts of this case. Counsel for defendants contends that because those differing facts were discussed in that portion of Judge Neterer's opinion that it must be concluded that those facts influenced that Court in its decision on the Government's first point. I can not agree with that contention. Nowhere in Judge Webster's decision nor in that portion of the opinion of the Circuit Court dealing with the Government's point [96] number one is there any indication that any of the facts which I have outlined in points 1-4 inclusive in my classification of the differences between the facts here and the facts in the Continental case were ever even con-

sidered. The mere fact that Judge Neterer mentioned them in discussing the Government's third point has no relationship to the consideration of the first one.

However, as I previously stated, defendant's counsel is presenting this case on a different theory from that pursued by counsel in the Continental case. He states that he is not using the "inherent adaptability" theory and that when Judge Webster and Judge Neterer used the language "hypothetical value" they had in mind an entirely different situation than that which he presents here. He states that he is making no claim to the right to use the bed of the river nor to the use of the water. He therefore, contends that he presents an entirely different case than that upon which Judge Webster and the Circuit Court of Appeals passed. Let us examine that argument.

Any money which defendant has spent in purchasing, investigating or improving this property was spent for the purpose of its use in providing abutments for a hydroelectric power dam. If it had not been suitable for that purpose, defendant would not have paid \$150,000 for it nor would it have spent another cent upon it. Aside from its use as agricultural land, defendant's land is valueless except for power site purposes. Unless it is used for power site purposes, it is also valueless regardless of how much money has been spent upon it. None of these prospective purchasers would have been interested in it had they known that



they could not build a dam across the river at that point. The use of the bed of the river and the flow of [97] the stream is insuperably connected with the use of the adjoining uplands in creating a value for power site purposes. Defendant could have spent \$5,000,000 or \$500,000,000 in the development of this property without making any difference. It only became valuable when it could earn on an investment through the creation of profits resulting from the sale of electrical energy. That value does not exist in a riparian owner as against the United States. I appreciate that counsel for defendant, with the utmost earnestness and all sincerity believes that he has offered to present a different case than that presented by the attorneys in the Continental case. He thinks that by disassociating the claim for the uplands from the claim for the use of the bed of the river or the flow of the stream that he can make out a case for a separate value. There is no such value. The uplands can not be disassociated from the bed of the river and the flow of the stream. Without the use of the bed of the river or the flow of the stream these uplands are no more capable of use for power site purposes than any other land in the arid region of Central Washington. But counsel says that they have actually expended almost half a million dollars in the purchase and development of this property as a power site. They might have gone further and have installed all of their generating equipment and their transmission lines but they still would not have had anything of value



as a power site. It takes the flow of running water to create value on hydroelectric development. The Government controls that. The Government has always controlled it and it is immaterial how much money defendant may have spent it would not get a power site of any value. Let me illustrate by what is probably an absurd example. Sometimes it requires absurd [98] examples to bring out the fallacies of very appealing arguments. I might spend an unlimited sum building and equipping a sanitarium for nervous patients on the land between the Milwaukee and Great Northern tracks in the center of Spokane. I might invest there a million dollars. I might have every piece of equipment known to modern medical science. It would not have the slightest value as a sanitarium for nervous patients. Should a condemnation action be brought against the property, I could recover nothing on the basis of its value as a sanitarium. Unfortunately, the defendant here invested its money and expended its funds in an effort to create a value which could not exist separate and apart from the use of other property which the Government controlled and which the Government decided not to permit this defendant to use. The defendant very naturally feels aggrieved that it is compelled to suffer this loss. It, however, must be realized that it purchased this property and expended these funds after the passage by the Congress of the Federal Power Act and eight years after the Supreme Court had decided the case of *United States v. Chandler-Dunbar*. De-

spite that fact, however, I would be strongly inclined to consider that portion of counsel's argument were it not for the opinion of the Supreme Court in the Appalachian Power case. There the Court said:

"The Federal Government has domination over the water power inherent in flowing streams. It is liable to no one for its use or non-use. The exclusion of riparian owners from its benefits without compensation is entirely within the Government's discretion. . . . Water Power development from dams in navigable streams is from the public's standpoint a by-produce of the general use of the rivers for commerce."

I am forced to the conclusion that there is no real dis- [99] tinction between the facts of this case and the facts of the Continental case. Therefore, despite my determination to permit the introduction of this testimony if a way could be found to justify it, I am now convinced that it would be of service to no one to take the time or to expend the money necessary to permit the introduction of defendant's proposed testimony. It may well be that the Circuit Court will decide that on the basis of the different facts of this case it will make a different ruling from that in the Continental case. Until then, I am bound by that decision.

Mr. Herman: If the Court please, you will allow us an exception to your ruling?

The Court: I will allow an exception. Do you want to make offers of proof, Mr. Paine?

Mr. Paine: Yes, if Your Honor please. This will take some little time. I don't know whether they should be made in the presence or the absence of the jury.

The Court: I don't know that it makes any difference. Do you want a little time to get ready?

Mr. Keith: May I say, Your Honor, that I think they should be made in the absence of the jury.

Mr. Paine: All right, about a five-minute recess.  
(Whereupon, a short recess was taken)

The Court: Before you start, for fear I may forget it, you will remember that during the plaintiff's case there was an offer made of the exhibit which constituted the denial of the application by the Federal Power Commission, and I reserved decision on that. I very largely agree with the position which the defendant takes on that, that the granting or failure to grant an application under all of the facts developed is not material and I will sustain the objection of the defendant to the introduction of Plaintiff's Exhibit "A" and will allow an [100] exception to the Government.

Mr. Paine: On these offers of proof, in order that we may run into no technical questions, the witnesses are all present in court and I think for the purpose of the record I would like to call them and maybe have them sworn as a group so that the record can show that the witnesses are present and sworn, ready to testify, so that there will be no question

about failure to make the proper offer and failure to have the necessary witnesses, so that if these gentlemen will stand I will ask to have them sworn: Mr. E. H. Collins, Mr. J. P. Graves, Mr. A. T. Larned, Mr. M. O. Leighton, Mr. W. F. Miller, Mr. K. M. Robinson and Mr. O. B. Shay. (The foregoing witnesses rose, were sworn by the clerk to the effect that the testimony they were about to give was the truth and nothing but the truth.)

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#### Offer of Proof No. 1

Mr. Paine: Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that the Kettle Falls site has been recognized in surveys and studies as one of the most suitable and feasible sites on the river for the development of electrical energy.

I am going to break these into quite numerous offers, Your Honor, because under the rulings an offer may be rejected if any part is improper or inadmissible, and some may be improper or inadmissible on some other ground than the general ground on which Your Honor held.

The Court: Then it will be necessary for the Government to make its objections. Let the record show that the Government [101] objects to all of the offers on the grounds which were heretofore

stated and upon which a ruling was made this morning.

Mr. Keith: I hope that it would speed proceedings if we can have a general objection, but I am reluctant to take a general objection unless we have the consent of the defendants that they may be considered as a specific objection to each offer of proof.

Mr. Herman: It won't take long for him to specifically object and for Your Honor to rule and for us to take our exceptions.

Mr. Keith: I object to the offer of proof upon the grounds stated in the argument.

The Court: Objection sustained.

Mr. Paine: Exception.

The Court: Exception allowed.

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### Offer of Proof No. 2

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that many projects have been construed under the provisions of the Federal Power Act, and the reasonable prices for said sites have been included as legitimate expense on the part of the companies constructing said power projects.

Mr. Keith: I object to the offer on the grounds stated and upon the additional ground that the evidence offered is immaterial.



The Court: Sustain the objection on the first ground and I will overrule the objection on the second ground. I think that while the general rule is that they can't prove expenditures, I think the nature of this case is such that had I [102] permitted the testimony of the defendant to be admitted that I would have to permit them to prove the amount of the expenditures because they cover the question of its value as a power site and the ultimate question for the witness, like Mr. Graves if he testified, would be as to its market value: For example, the money that you spent in boring, you would probably show the amount that you spent in boring, because any purchaser would take that fact into consideration in determining how much they would pay for it. Therefore, I will overrule the objection on that ground and allow an exception for the first ruling to the defendant.

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### Offer of Proof No. 3

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that by the Act of August 30, 1935, the United States authorized and adopted the Grand Coulee Dam project providing for the erection of a dam of sufficient height to flood the lands of the defendant at Kettle

Falls and completely eliminate the head of water at Kettle Falls; that the defendant's land has been taken by the United States in this proceeding as a part of said Grand Coulee Dam project; that had this development, as a part of which the defendant's lands are being condemned, not been made, the defendant at this time would have been ready to construct a hydroelectric project at Kettle Falls.

Mr. Keith: We object on the general ground and also on the special ground that the testimony offered would be immaterial.

The Court: I will sustain the objection on the general ground and allow an exception and overrule the objection on the [103] special ground.

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#### Offer of Proof No. 4

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness that the shore lands of the State of Washington adjoining the property of the defendant, The Washington Water Power Company, being herein condemned were negotiated for by The Washington Water Power Company with the State of Washington; that the State of Washington, acting by and through the Land Commissioner of said state, had agreed to sell said shorelands on each side of the Columbia

River to the defendant, The Washington Water Power Company, for approximately \$29,000, and that said agreement was in full force and effect and in good standing on August 30, 1935, when the United States Government authorized and adopted the Grand Coulee Dam project.

Mr. Keith: I object to that on the general grounds.

The Court: Objection sustained and exception allowed.

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#### Offer of Proof No. 5

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that The Washington Water Power Company had made application to the State Supervisor of Hydraulics by applications No. 708 and 709 for permits to appropriate and store waters of the Columbia River; that its applications were prior in point of time to any other applications made with reference to the use of the waters of said river; that The Washington Water Power Company did keep said applications in good standing and did pay all license fees [104] due the State of Washington; that on July 17, 1934, the State Supervisor of Hydraulics advised The Washington Water Power Co. that its applications to appropriate and store the waters at

Kettle Falls would be kept in good standing until such time as the United States Government took steps to construct the high dam at Grand Coulee; that the aforesaid applications were finally canceled by the State Supervisor of Hydraulics after the United States Government started construction of said dam at Grand Coulee; and that said cancellation of said applications was the consequence of such construction by the United States of America.

Mr. Keith: I object on the general grounds and also the special ground that the proof, if offered, would be immaterial.

The Court: Sustain the objection on the general ground and allow an exception and overrule the objection on the special ground.

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Offer of Proof No. 6

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that as a result of and by reason of the action of the United States Government in authorizing and adopting the Grand Coulee dam project under the Act of August 30, 1935, and by reason of the action of the United States Government in proceeding with the construction of the Grand Coulee high dam, the Supervisor of Hydraulics of the State of Washington canceled the said applications, Nos. 708 and 709.

Mr. Keith: We object to that upon the general grounds and also on the special ground that it is immaterial, and further- [105] more, that the witness through whom the offer is made is incompetent to testify.

The Court: I will sustain the objection on the general ground and overrule it on the special ground. I want the Circuit Court of Appeals to get the statement clear on that.

Mr. Herman: If the Court please, allow us an exception.

The Court: And will allow an exception.

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### Offer of Proof No. 7

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that the land of the defendant, The Washington Water Power Company, which has been taken by the United States and for which the jury is to make an award in this cause consisted of 330.31 acres of upland adjacent to the Columbia River. That is probably covered by the stipulation as an admitted fact. We want to get it in definitely in the proof that it was uplands and not submerged lands or not bottom lands as talked about in some of these other cases as being below the high water mark.



Mr. Keith: We have no objection to this offer of proof but think it is covered completely by the stipulation.

The Court: I think so and I don't believe it is desirable to inject the question as to possibly being under controversy. I certainly decided the objection on the theory that it was uplands.

Mr. Keith: In order to keep the record clear on that point, that there is no doubt in the minds of counsel for the defendant that the land taken by the United States in this proceeding is upland as a fact, I am willing to stipulate that the [106] 330.31 acres of land taken by the United States are upland lands.

Mr. Paine: With that, we will withdraw offer No. 7.

The Court: All right.

Mr. Herman: The record will show that we have so stipulated, then, Your Honor?

The Court: Yes.

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Offer of Proof No. 8

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that during the period from 1921 to 1936, the defendant, The Washington Water Power Company, entered into and conducted negotiations with the Federal

Power Commission to obtain a license to develop the power site on its lands which are the subject of this litigation and said negotiations continued until the Federal Power Commission denied the defendant a license to develop said site after Congress passed the Act of August 30, 1935, authorizing and approving the Grand Coulee dam.

Mr. Keith: I object to that on the general grounds and on the special ground that it is immaterial and that the witness is incompetent to testify to the facts offered.

The Court: Sustain the objection on the general grounds and allow an exception and overrule the objection on the special ground.

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#### Offer of Proof No. 9

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, [107] that during the time the defendant, The Washington Water Power Company, was making studies relative to the development of hydro-electric power at the Kettle Falls project after it was the owner of the lands here involved, and before the Act of August 30, 1935, authorizing and approving the Grand Coulee dam project, it obtained original records of stream flow data and river data relative to the Columbia River extending from the Canadian bor-

der to what is known as Rickey Rapids below Kettle Falls; this river data was made use of by the Bureau of Reclamation in making plans for the development of the Grand Coulee project and in connection with their hearings before the International Joint Commission relative to the encroachment of backwater into the Dominion of Canada during the period just prior to the submersion of the Kettle Falls property by the United States; that during the time it was making such studies of the Columbia River, the defendant, The Washington Water Power Company, built a gauging station on the Columbia River in connection with its engineering studies and that said gauging station was operated during said time by the United States Geological Survey at the request of the Bureau of Reclamation.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and allow an exception.

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#### Offer of Proof No. 10

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that topographical maps were made by The Washington Water Power Company of the territory along the Columbia River from the Canadian border to what is known as

Rickey Rapids below Kettle [108] Falls during the time it was making the aforesaid studies, which maps were furnished to the Bureau of Reclamation at its request and used by said Bureau of Reclamation in connection with its plans for the construction of Grand Coulee.

Mr. Keith: We object on the general objection and the special objection that it is immaterial.

The Court: Sustain the general objection and allow an exception and overrule the special objection.

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#### Offer of Proof No. 11

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that the United States army engineers undertook to make a study of the Columbia River and its tributaries and a report was made, commonly known as the No. 308 report and published as House Document No. 103. In this report the army engineers made use of all data obtained from the defendant in making studies of power development at Kettle Falls. All of this data was collected by The Washington Water Power Company during the time it owned said lands and during the times it was making said studies, under the direction of the District Engineer of the United States army engineers at

Seattle, Washington, and a considerable part of said data was assembled at the specific request of said District Engineer of the United States army engineers.

Mr. Keith: Objected to on the general grounds and upon the special ground that it is immaterial and that the witness through whom the offer is made is incompetent to testify.

The Court: Sustain the objection on the general ground [109] and allow an exception and overrule the objection on the special ground.

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Offer of Proof No. 12

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that the sum of \$156,043.35 paid by the defendant, The Washington Water Power Company, for the lands involved in this proceeding was a reasonable price for said lands at the time they were purchased by the defendant, The Washington Water Power Company, in 1921.

Mr. Keith: The offer is objected to on the general grounds and furthermore, on the special ground that the testimony offered is immaterial and that the purchase price of the lands is not proper testimony as to the reasonable market value.



The Court: Sustain the objection on the general grounds and allow an exception and overrule the special objection.

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Offer of Proof No. 13

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that he is the Hydraulic Engineer of the defendant, The Washington Water Power Company; that he has been continuously employed by the defendant, The Washington Water Power Company, since May 1921, the year in which the said defendant, The Washington Water Power Company acquired the Kettle Falls site, that is, the lands herein involved; that he has had conferred upon him the degree of Bachelor of Science by the Michigan Agricultural [110] College, now known as the Michigan State College; that the Michigan State College conferred upon him the degree of Civil Engineer in August, 1926; that as part of his duties in connection with his employment with The Washington Water Power Company he was assigned to the engineering department and was connected with all of the transactions involving the development of the lands herein involved.

Mr. Keith: No objection to the offer of proof as to the witness' qualifications. I am willing to stipulate for the purpose of the record that Mr. Collins

is possessed with the qualifications of an engineer and is qualified to testify as an engineer.

Mr. Paine: But this contains further material which has been connected——

The Court: I would permit him to testify as to his qualifications if he had been put on in the first place. I wouldn't sustain an objection to that testimony just because I sustained an objection to what he subsequently testified to. He is entitled to have the witness testify as to his qualifications.

Mr. Paine: Then the stipulation is that the Government has stipulated that the Witness Collins has the qualifications mentioned in the offer of proof?

Mr. Keith: Yes.

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#### Offer of Proof No. 14

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the Witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that in the opinion of the said witness the highest use to which the land involved in this proceeding could be devoted would be [111] as abutments for dams in connection with hydro-electric development; that the market value of these lands is not determined by the whole value of such hydro-electric development or by use of the waters of the Columbia River in connection therewith, but is only the value of the lands as abut-

ment lands, taking into consideration all the facts in regard to the development and cost of the development and the amount of power that can be developed at the property; and likewise taking into consideration the likelihood or the lack of likelihood of obtaining the necessary license from the Federal Power Commission by which authority to construct a hydro-electric plant using these lands could be obtained in the reasonably near future; and the likelihood or lack of likelihood that other necessary consents to complete such hydro-electric project could be obtained at a reasonable cost in the reasonably near future; that he is familiar with the fair market value of these lands based upon a consideration of the use of such land as abutments for dams in connection with a hydro-electric development; that the fair market value of the lands determined by a purchaser willing to purchase but not compelled to purchase and a seller willing to sell but not compelled to sell, both having in mind all of the considerations above set forth by the witness, would in his opinion be as of December 9, 1939, \$500,000.

Mr. Keith: I object to the offer on the general grounds and upon the special ground that the witness would not be competent to testify as to the fair market value.

The Court: Sustain the general objection and allow an exception, and overrule the special objection. [112]

## Offer of Proof No. 15

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that shortly after acquiring the property The Washington Water Power Company made application to the Federal Power Commission for a preliminary permit on the 30th day of June, 1921; that a preliminary permit was issued designating said project as Project No. 229 on July 26, 1922; that after the granting of said preliminary permit The Washington Water Power Company proceeded to carry on the survey work necessary to obtain the data and information relative to the development of said site; that topographical surveys of the power site land and water surfaces contained within the limit of the project were prepared; that stream measurements were made of the Columbia River at the Town of Marcus; that foundation explorations were carried on, consisting of diamond drilling and wash borings of the proposed site; that said permit was maintained in good standing at all times; that application for a permit under the terms of the Federal Power Commission Act was prepared and the application was made to the Federal Power Commission on July 26, 1922; that on July 16, 1925, The Washington Water Power Company filed application for a Federal Power Commission license.

Mr. Keith: We object to the testimony offered

on the general grounds and upon the special ground that the testimony offered is immaterial.

The Court: Sustain the objection on the general grounds and allow an exception; overrule the objection on the special ground. [113]

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### Offer of Proof No. 16

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that shortly after the application for the development of the Kettle Falls project was made, an application was made by the Washington Water Power Company in 1926 to develop the Chelan project. The Chelan project was a federal licensed project. That considerable correspondence developed between The Washington Water Power Company and the Federal Power Commission; that the Federal Power Commission approved and consented to the development of the Chelan site ahead of the Kettle Falls site; that the application for the Kettle Falls site was kept in good standing during this period.

Mr. Keith: We object to the testimony offered on the general grounds and upon the special ground that it is immaterial.

The Court: I will sustain the objection on the general ground and allow an exception; overrule



the objection on the special ground, and will say that my reason for overruling the objection on the special ground all the way through is that the objection that the testimony is immaterial is not sufficiently definite for me to indicate what objection you may have to it and I don't want any inference to be drawn from the record that when I overrule the objection as immaterial that I mean that it is material. It seems to me that your special objection, not definitely stated, might leave that inference. I have already ruled that it is immaterial.

Mr. Keith: That may be true. In connection with the last [114] offer, my objection as to the question of immateriality is upon the question that the offer of proof relative to the construction of the Chelan project ahead of the Kettle Falls project would not have any logical tendency to prove or disprove any offer in this case.

The Court: The only materiality it may have, assuming that I should have ruled the other way, would be upon the basis that it would be an explanation of why The Washington Water Power Company had waited so long on the Kettle Falls project, and on that basis I think it should be admitted. I will overrule the objection.

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Offer of Proof No. 17

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the wit-

ness E. H. Collins, who is present in the court room and who has been sworn as a witness, that in 1928 Major Butler, District Engineer of the United States army engineers, requested The Washington Water Power Company to make detailed designs and to submit additional foundation data and other information relative to its application for license.

Mr. Keith: Objected to upon the general ground.

The Court: The objection is sustained and exception allowed.

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#### Offer of Proof No. 18

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that the request of Major Butler, District Engineer of the [115] United States army engineers, for detailed designs and additional foundation data and other information was complied with and the information submitted.

Mr. Keith: Objected to on the general grounds.

The Court: Objection sustained on the general grounds and exception allowed.

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#### Offer of Proof No. 19

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness

E. H. Collins, who is present in the court room and who has been sworn as a witness, that in 1931 Major Butler, District Engineer of the United States army engineers, requested all of the data available of The Washington Water Power Company's studies of the 120-foot head project, and that such request was complied with on January 15, 1931.

Mr. Keith: Objected to on the general ground.

The Court: Objection sustained and exception allowed.

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Offer of Proof No. 20

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that The Washington Water Power Company had completed and prepared all the necessary data, with survey maps, preliminary engineering studies for the purpose of showing that it was prepared on December 9, 1939, to start with the construction of the project.

Mr. Keith: Objected to on the general grounds, and upon the special ground that it is not material to the controversy [116] here whether they were going to build on December, 1939, or at a later date.

The Court: The general objection is sustained and exception allowed and special objection overruled.

## Offer of Proof No. 21

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that he is familiar with the monies actually spent by The Washington Water Power Company in the development work and that they were spent under his supervision; that The Washington Water Power Company spent the sum of \$22,553.65 determining the stream flow of the Columbia River by means of various cables and supports across the Columbia River and construction of various gauges, including the automatic gauging station; that all of said expenditures were for the purpose of securing data which was essential to the development of the Kettle Falls hydro-electric project and would be of value to a purchaser who purchased said lands, and that without the lands to which the said data applies, namely, the land involved herein, said data procured at the said cost of \$22,553.65 becomes valueless and useless to the defendant or to anyone except the United States Government.

Mr. Keith: Objected to upon the general ground and upon the special ground that the testimony as to expenditures made by the land owner would be immaterial as not having a bearing upon the fair market value for the lands in question.

The Court: Sustain the objection on the general ground and allow an exception, and overrule the objection on the [117] special ground for the reason that it appears to me that testimony of that kind, though ordinarily not admissible, would be admissible in this case in explanation of the fact that during the period of 1921 to 1936, the Company thought the land was valuable for power site purposes and it does enter into the consideration of the fair market value of the land if the Company wanted to sell.

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Offer of Proof No. 22

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that The Washington Water Power Company spent the sum of \$20,597.52 installing gauges to establish water surface profiles on the Columbia River and also cross-sections of the river at these various gauges extending from the Canadian border to Riekey Rapids, a short distance below Kettle Falls; that all of said expenditures were for the purpose of securing data which was essential to the development of the Kettle Falls hydro-electric project and would be of value to a purchaser who purchased said land; that said sum of \$20,597.52 was necessary for compiling of said data, and that without the lands to which the



said data applies, namely, the lands involved herein, said data becomes valueless and useless to The Washington Water Power Company and to anyone but the United States Government.

Mr. Keith: Objected to upon the general grounds and upon the special ground that expenditures made by the landowner have no tendency to prove the issues in this case as to the fair market value of the land.

The Court: Sustain the objection on the general grounds [118] and allow an exception, and overrule the objection on the special ground.

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#### Offer of Proof No. 23

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the courtroom and who has been sworn as a witness, that The Washington Water Power Company spent the sum of \$52,268.96 in the preparation of topographical maps of the banks of the Columbia River extending from the Canadian border to Rickey Rapids, a short distance below Kettle Falls; that these maps were necessary as part of the preliminary development of the construction of any hydro-electric project at Kettle Falls; that all of said expenditures were for the purpose of securing data which was essential to the development of the Kettle Falls hydro-electric

project and would be of value to a purchaser who purchased said lands; that said sum of \$52,268.96 was necessary for the compiling of said data and that without the land to which the said data applies, namely, the lands involved herein, said data becomes worthless and useless to defendant, The Washington Water Power Company, or anyone except the United States.

Mr. Keith: Objected to upon the general ground and upon the special ground that the offered testimony as to expenditures made upon the land in connection with any prospective use of the land would have no tendency to prove the issue of the fair market value.

The Court: Sustain the objection on the general ground and exception allowed; overrule the objection on the special ground. [119]

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#### Offer of Proof No. 24

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that The Washington Water Power Company spent the sum of \$98,970.08 to make wash borings and diamond drillings for the purpose of exploring foundations and conditions of the project; that these diamond drillings and wash borings established that

there was a sound rock foundation for the building of said dam; that said diamond drilling and wash borings were a necessary part of the construction of any project on the lands here involved and that without the said lands to which diamond drilling and wash boring applied, said data becomes valueless and useless to the defendant, or anyone except the United States.

Mr. Keith: Objected to upon the general ground and upon the special ground that the testimony offered to prove the expenditures in connection with the prospective use of this land has no tendency to prove the fair market value.

The Court: Sustain the objection on the general ground and exception allowed, and overrule the objection on the special ground.

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#### Offer of Proof No. 25

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that diamond drilling and wash borings made by the defendant, The Washington Water Power Company, enhanced the value of said land; that they are valuable to a purchaser who desires to use these lands for the purpose of hydro-electric development. [120]

Mr. Keith: Objection on the general ground and the special ground that the testimony as to expenditures of this kind has no tendency to prove the fair market value.

The Court: Sustain the objection on the general ground and exception allowed, and overrule the objection on the special ground.

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Offer of Proof No. 26

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that The Washington Water Power Company spent the sum of \$106,333.23 for general engineering studies, including various investigations and preparation of necessary data, including the design of the power house and details of all of the necessary pertinent works; that the general engineering studies made by the defendant, The Washington Water Power Company, were necessary as a preliminary expense in the construction of any hydro-electric project at Kettle Falls; that all of said expenditures were for the purpose of securing data which was essential to the development of the Kettle Falls hydro-electric project and would be of value to a purchaser who purchased said lands; that without the land to which the said data applied, namely, the land involved

herein, said data becomes valueless and useless to the defendant, The Washington Water Power Company, and to anyone else except the United States.

Mr. Keith: Objected to upon the general grounds and upon the special ground that the expenditures for engineering studies would have no value in proving the fair market value.

The Court: Sustain the objection on the general ground [121] and allow an exception, and overrule the objection on the special ground.

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#### Offer of Proof No. 27

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness E. H. Collins, who is present in the court room and who has been sworn as a witness, that the total cost of The Washington Water Power Company's investment in this project for necessary preliminary engineering and survey work, including the cost of lands, is \$465,785.97, and that said sum is fair and reasonable.

(I made a slight recapitulation of figures a little bit different than I gave in my opening statement and Your Honor used in your memorandum. It is \$465,785.97.)

That all of said expenditures were for the purpose of securing data which was essential to the development of the Kettle Falls hydro-electric pro-



ject and would be of value to a purchaser who purchased said lands; that without the lands here involved to which said data applies, said data becomes valueless and useless to the defendant, The Washington Water Power Company, and to anyone except the United States.

Mr. Keith: We object upon the general ground and upon the special ground that the evidence as to the total amount of expenditures on the land has no tendency to prove or establish the fair market value.

The Court: Sustain the objection and allow an exception and overrule the special objection.

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Offer of Proof No. 28

Mr. Paine:

Comes now the defendant, The Washington Water Power Com- [122] pany, and offers to prove the following matters, allegations and things set forth and contained upon Pages 720 to 726, inclusive, of that report entitled "The Columbia River and Minor Tributaries, House Document No. 103." Said House Document No. 103 is hereby offered in evidence in connection with this offer of proof, and as one of the documents covered by the stipulation re: evidence now on file herein.

Now, the stipulation, as Your Honor recalls, permits the introduction in evidence of any official Government report without any proof as to its authenticity of publication and so forth. We don't want to put in, of course, the whole of the publica-

tion "The Columbia River and Minor Tributaries" but only these pages. I don't believe it will be necessary for me to read them to the reporter at this time. The book can be available and they can be copied in in entirety in the record merely by a reference to the pages, but I think I would rather have them copied, these pages 720 to 726, inclusive, into that offer from the document. Now, if Your Honor wants to read it to make a ruling on it, or if you want to glance through it, it is the report of the United States engineers that they made on the Columbia River and its minor tributaries in regard to the Kettle Falls project, giving a detailed description of its geological formation, the topography and geology, its power possibilities, including the cost, estimated capital cost for the development of the Kettle Falls site, both for private development and public development, including the cost of the preliminary expenses and the acquisition of the dam site lands, the cost for the acquisition of the reservoir land, the feasibility of the development by private capital, and reciting the fact that The Washington Water Power Company had made and there [123] was pending its application for a license before the Federal Power Commission.

The Court: Well, as far as I am concerned, it is fairly satisfactory to just have the reporter copy that part.

Mr. Herman: It can easily be read to Your Honor.

Mr. Paine: I don't want to trespass upon your time for a mere technicality but I don't want any question raised that Your Honor wasn't fully apprised of the nature of the material contained in the offer.

The Court: The record may show that I have already read it and there is no necessity for reading it to me again.

Mr. Herman: And it may be admitted to have been read in connection with the offer.

Mr. Keith: I make no objection on the ground it wasn't read in its entirety but do object to it upon the general grounds.

The Court: Objection sustained and exception allowed.

(The part of the offer described as Pages 720 to 726, inclusive, of the report "Columbia River and Minor Tributaries" is as follows:)

(2) Undeveloped Power—1. Sites on Main Stream

(a) Kettle Falls—1. Detailed Description

500. This site is located in section 11, township 36, north, range 37 east Willamette meridian, at the Kettle Falls of Columbia River. It is about three miles north of the town of Kettle Falls and about seventy miles north of the city of Spokane. The site is forty-one miles by river from the international boundary, 110 miles above the Grand Coulee site, 383 miles above the mouth of Snake River. The general location [124] is shown on plate No. 1, page 365.

## a. Resume.

Drainage area .....	square miles	64,500
Length of pool.....	miles	41
Length of dam.....	feet	2,550
Height of dam (maximum section, foundation to walkway).....	do	163
Drawdown (elevation 1,288.4 to 1,278.4 feet) .....	do	10
Useful pondage .....	acre-feet	91,000
Natural low-water elevation.....	feet	1,165
Maximum known discharge (June 1894) .....	second-feet	700,000
Spillway capacity .....	do	875,000
Natural river flow (April 1913 to March 1931, Inc.):		
Maximum discharge, 24 hours.....	do	468,000
Mean discharge .....	do	100,000
Minimum discharge, 24 hours.....	do	14,000
Average static head.....	feet	114
Power capacity (Federal Power Commission definition) horsepower.....		217,000
Proposed hydraulic capacity.....	second-feet	71,000
Proposed installed capacity.....	kilowatts	447,700

501. b. Topography and geology.—The Columbia at this site flows south and is separated into two channels by a low, rocky reef three quarters mile long, known as “Hayes Island.” See plate no. 37<sup>2</sup> for topography of the site. The channel on the right, designated the “Main” is the larger of the two; the other channel is designated the “Minor.” Both channels are somewhat obstructed by rocky islets. The water makes the major portion of its descent in two

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<sup>2</sup>Not printed.

falls—the upper situated about midway of the length of Hayes Island and the lower at a narrow [125] constriction just below the confluence of the two channels. The natural low-water elevation above the dam site at the upper end of Hayes Island is 1,202 feet, and at the foot of the lower falls is 1,165 feet.

502. The rock formation at the site is a heavy bed of hard quartzite and quartz-mica schist, which outcrops rather uniformly along the shores and in the stream bed. The overburden is a glacial drift and is apparently shallow at the dam site. A considerable number of exploratory holes have been drilled by the Washington Water Power Co. at the site, and the resulting data have been filed with the Federal Power Commission. These explorations indicate that the foundation rock, at all places drilled, is suitable for structures of the magnitude outlined hereafter in this report.

503. During the study of the Columbia River a power site at the Little Dalles was investigated. It is located 15 miles by river from the international boundary, and 26 miles above the Kettle Falls site. A topographic survey of the site was made, and a map of the site is shown on plate no. 38.<sup>2</sup> The natural low water elevation is 1,243.4 feet. No test borings or other subsurface investigations were made. The chan-

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<sup>2</sup>Not printed.



nel at the site is less than 200 feet wide at low water and is at least 55 feet deep. Outcropping limestone on both banks extends from the water's edge up to an elevation of about 1,300 feet. The forebay could not be maintained above elevation 1,288.4 feet without backing the water up into Canada and causing international complications; hence the head would be limited to 45 feet at the lowest flow and would be only 24 feet for a flow of 200,000 second-feet. Due to the [126] restricted channel, the head reduces to such an extent for the higher flows that the plant could not operate more than 10 months in a year of average flow. Under these conditions it was considered more economical to develop this head at either the Kettle Falls site or at the Grand Coulee site, either of which would be advantageous from the standpoint of increased pondage. Further consideration was not given, therefore, to the Little Dalles site.

504. c. Power possibilities.—The proposed elevation of the forebay is 1,288.4 feet, which would back the water up to the international boundary 41 miles upstream. The natural water surface for a flow of 18,700 second-feet is 1,291.5 feet at the boundary. A 10-foot drawdown, with a resulting pondage of 91,000 acre-feet, can be utilized to provide for daily variation of load. The maximum head at the site would be 124 feet, and the mean static head for natural flow

would be 114 feet. The head available for the assumed maximum discharge would be 75 feet, hence the turbines would not be "drowned out" during any anticipated floods. The mean monthly natural discharge for the 18-year period, April 1913 to March 1931, inclusive, is shown in table no. 22.

505. Plate no. 39<sup>2</sup> contains 27 power graphs showing the available power for the high, mean, and low years of the 17-year period ended March 31, 1930, for three installed capacities for natural flow (case 1 of plate no. 41)<sup>2</sup> and for flows regulated by means of upstream storage for cases 2 and 6 of plate no. 41.<sup>2</sup> Note especially that graphs 10 to 27, inclusive, take into account the effect of regulation of upstream storage, but no regulation of storage at the site. [127]

506. The three hydraulic capacities considered on plate no. 39 are equal to the natural flow for 35 percent, 50 percent, and 90 percent of the time. These three flows were arbitrarily selected as a basis for a study of the power possibilities of the site, and are not to be confused with the hydraulic capacity as set up in the resume and hereafter in this report.

507. The three plant capacities expressed in kilowatts are those capacities which correspond to the above selected flows and to the heads ob-

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<sup>2</sup>Not printed.

taining at these flows. It so happens that the intermediate capacity of 463,000 kilowatts approximates the capacity set-up in the resume. The tables accompanying the graphs also show the utilization and plant capacity factors for 100 percent operation. These factors are shown graphically on plate no. 40.<sup>2</sup> By comparison of graphs 2, 11 and 20, on plate no. 39,<sup>2</sup> it is noted that regulation increases the annual utilization factor from 55 percent to 63 and 64 percent, respectively, for the pumping and gravity plans for the low year, with a hydraulic capacity of 58,200 second-feet, which discharge was equaled or exceeded 50 percent of the time during the 17-year period. See case 1 of plate no. 41.<sup>2</sup> Likewise, the total power available for the low year with the above plant capacity is 298,000, 345,000, and 323,000 kilowatt-years for natural flow and for regulated flows for the pumping and gravity plans, respectively.

508. The table on plate no. 41<sup>2</sup> shows the power duration 35, 50, 65, 80, 90, and 100 percent of the time for the 17-year period ended March 1930 for natural flow, and for the regulated pumping and gravity plans. In obtaining the regulated [128] flows shown in that table control of the following reservoirs was assumed after allowing for withdrawal of irrigation water, as stated in paragraph 178.

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<sup>2</sup>Not printed.

	Approximate Capacity in Acres-feet
Reservoir:	
Hungry Horse .....	1,100,000
Flathead Lake .....	1,540,000
Priest Lake .....	569,000
Pend Oreille Lake.....	1,610,000
Kootanay Lake .....	715,000
Total.....	5,534,000

509. In case 2 of plate no. 41,<sup>2</sup> the Columbia Basin irrigation project would be irrigated with water from Clark Fork and Spokane River. In case 6 it would be irrigated with water pumped from the Columbia River at Grand Coulee.

510. As a basis of comparison, the potential power available 90 percent of the time is 199,000; 256,000 and 291,000 kilowatts for cases 1, 2 and 6, respectively; or, considering case 1 as 100 percent, case 2 would be 129 percent, and case 6 would be 146 percent. For similar conditions of regulation, the increase in potential power under the pumping plan, for 90 and 100 percent of the time, over that obtaining under the gravity plan, is worthy of note.

511. The duration of potential power for cases 1, 2, and 6 is shown graphically on plate no. 41.<sup>2</sup> The energy available annually for various cases as indicated on this plate is shown on table no. 105. [129]

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<sup>2</sup>Not printed.

Table No. 105.—Energy available at the Kettle Falls site for 17-year period ended March 31, 1930.

Case	90 percent of the time	Additional energy for 50 percent of the time	Further additional energy for 35 percent of the time
	Kilowatt-years	Kilowatt-years	Kilowatt-years
1 .....	196,000	176,000	121,000
2 .....	254,000	148,000	94,000
6 .....	289,000	140,000	100,000

512. The installed capacity selected for discussion is 447,700 kilowatts, which is based on the available potential power in case no. 6 for 90 percent of the time (291,000 kilowatts) with a 65 percent load factor. The power house, as shown on plate no. 37,<sup>2</sup> and the estimates of cost given hereafter were based on this installed capacity.

513. d. Proposed development.—The project works, as planned, involves the construction of a dam extending across the Main Channel, thence downstream on Hayes Island, paralleling this channel to the power house, and a power house situated on the lower end of Hayes Island and extending across the Minor Channel above the lower falls. See plate no. 37 for general arrangement and location. In order to utilize this head it was planned to excavate a

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<sup>2</sup>Not printed.



channel for the tail-race through the peninsula adjacent to the lower falls.

514. The dam would be a gravity-type concrete structure. The section extending across the Main Channel would provide a spillway with crest at elevation 1,253.4 feet, surmounted by 13 Stoney gates 50 feet long by 35 feet high. At the left end, an abutment section would curve downstream on Hayes Island, to connect to another spillway section containing 8 Stoney [130] gates of the same dimensions as those in the Main Channel. A free overflow crest with an elevation of 1,288.4 feet and length of 840 feet would be constructed between this spillway section and the power house. Thus, a total spillway capacity of 875,000 second-feet at normal forebay level would be provided.

515. The power house, as planned, would be constructed of sufficient size to accommodate 12 main units and 2 house units. Each main unit would consist of a vertical shaft, Francis-type turbine direct-connected to a 37,310-kilowatt generator. The turbine would have a hydraulic capacity of 5,917 second-feet at a head of 92.6 feet, which is the head available at the site for the month of maximum flow for the 17-year period. Transformers in the back portion of the building would step the voltage up to 220,000 volts, for delivery to an outdoor switching station on the left bank.

516. Locks, if required, would extend be-

neath the left approach of the highway bridge and connect to the Minor Channel above the power house.

517. The reservoir site is located in a rough region covered with a fair growth of small timber. Small areas of tillable land would be flooded at normal forebay level. The town of Marcus, and about 15 miles of the Great Northern Railway tracks, would be inundated, including two railroad bridges, one crossing the Columbia River at Marcus and the other crossing the Kettle River about 3 miles above its mouth at Boyds. Three miles of logging railroad, including a bridge across the Kettle River, would also be inundated.

518. A bridge at Northport, 31 miles above the dam site, constructed by the Great Northern Railway, used as a highway [131] bridge since 1924, has sufficient clearance for all ordinary floods, but would obstruct the assumed maximum flood of 875,000 second-feet. For construction purposes, it was planned to build a branch line about 5 miles long to connect with the Great Northern Railway near the station at Meyers Falls.

519. e. Economic features.—The principal items of construction and the estimated capital cost of the project are shown in table no. 106. The cost of locks and other navigation features in connection with the power project are not shown herein, but will be given later in chapter

II, under "Combined Uses." Note that the total estimated cost per kilowatt of installed capacity is sixty-seven dollars for public development, and seventy dollars for private development. The difference in cost is due to different rates of interest used during construction.

Table No. 106—Estimate of the capital cost of development at Kettle Falls site for an installed capacity of 447,700 kilowatts.

Preliminary expense .....	\$ 871,500
Construction railroad .....	85,000
Reservoir .....	3,962,000
River diversion .....	350,000
Dam .....	3,941,175
Power-house .....	4,024,800
Hydraulic equipment .....	3,750,000
Electrical equipment .....	3,514,445
Switching station .....	370,000
Miscellaneous equipment .....	75,000
Permanent buildings .....	40,000
Tailrace .....	1,519,000
	[132]
Contingencies, 10 percent.....	\$ 2,250,292
	<hr/>
Total field cost.....	24,753,212
	<hr/>
Overhead, 12½ percent .....	3,094,153
	<hr/>
Total construction cost.....	<u>27,847,365</u>

For public development :

Total construction cost.....	27,847,365
Interest charged during construction, 8 percent .....	2,227,783
<hr/>	
Total capital cost.....	30,075,148
Capital cost per kilowatt.....	67
<hr/>	

For private development :

Total construction cost.....	27,847,365
Interest charged during construction, 12 percent .....	3,341,679
<hr/>	
Total capital cost.....	31,189,044
Capital cost per kilowatt.....	70

520. Table no. 107 shows the annual operating cost for both public and private development. Note that this cost is 6.3 percent of the capital cost for public development, and 8.5 percent of the capital cost for private development. Plate no. 42<sup>2</sup> shows graphically the cost per kilowatt-hour of energy generated for plant capacity factors varying from 10 to 100 percent. Note that the cost per kilowatt-hour for a 50 percent plant capacity factor is 1 mill for public development, 1.4 mills for private development for an annual operating cost of 8.50 percent of the capital cost, as derived from table no. 107, and 2 mills for private development for an annual operating cost of 12.5 percent of the capital cost, as frequently used by the public utility companies. [133]

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<sup>2</sup>Not printed.

Table No. 107.—Estimate of annual cost of power production at Kettle Falls with an installed capacity of 447,700 kilowatts.

	Public development	Private development
1. Investment cost:		
Lands and water rights .....	\$10,605,359	\$10,998,151
Dam and substructures.....	5,955,665	6,176,246
Subtotal "A" .....	16,561,024	17,174,397
Power plant machinery and superstructure .....	13,514,124	14,014,647
Total development capital cost .....	30,075,148	31,189,044
2. Basis of annual cost:		
(a) Return or interest in per- cent of capital cost.....	4	6
(b) Amortization of bonds, 40- year sinking fund basis in percent of capital cost....	1.05	0
(c) Depreciations:		
(1) Lands and water rights in percent of capital cost .....	0	0
(2) Dam and substruc- tures, 100-year sink- ing fund basis, in percent of capital cost	0.08	0.018
(3) Power plant machin- ery and superstruc- ture, 30-year sinking fund basis, in percent of capital cost.....	1.78	1.26
(d) Taxes, in percent of cap- ital cost .....	0	1.5



	Public development	Private development
(e) Maintenance and operation expense including 10 percent of cost of labor and material for general expense .....	\$ 148,616	\$ 148,616
3. Total annual cost:		
Items included in subtotal "A":		
Interest or return.....	662,441	1,030,464
Amortization .....	173,891	.....
Depreciation .....	4,764	1,111
		[134]
Taxes .....	.....	257,616
Subtotal .....	841,096	1,289,191
Power Plant:		
Interest or return.....	540,565	840,879
Amortization .....	141,898	.....
Depreciation .....	240,551	176,584
Taxes .....	.....	210,219
Maintenance and operation	148,616	148,616
Subtotal .....	1,071,630	1,376,298
Total project:		
Interest or return.....	1,203,006	1,871,343
Amortization .....	315,789	.....
Depreciation .....	245,315	177,695
Taxes .....	.....	467,835
Maintenance and operation..	148,616	148,616
Total annual cost.....	1,912,726	2,665,489
Annual operating cost in percent of capital cost.....	6.3	8.5

## 2. Earlier Plans of Development

521. The Washington Water Power Co. made application to the Federal Power Commission on April 4, 1925, for a license to develop the site in pursuance of a preliminary permit issued July 26, 1922. Their plans called for a normal forebay elevation of 1,245 feet, which would back water up to the Little Dalles site and create a maximum head of 80 feet at minimum flow.

522. a. Principal works proposed. — As planned in the application for license, a dam would be constructed in the main [135] channel above the upper falls, about midway of Hayes Island, thence an abutment section would extend downstream to the dam crossing minor channel at the south end of the island. Thence, another abutment section would cross the peninsula to connect with the power house. The major dam was designed with seventeen gate openings, each 50 feet wide, fourteen, 45 feet high, and three, 22.5 feet high. The minor dam provided for 6 gate openings, 40 feet wide, and one 20 feet wide, all of which would be 20 feet high. The total spillway capacity would be approximately 825,000 second-feet.

523. b. Power.—The licensee proposed to develop 150,000 continuous and 80,000 secondary horsepower, by stages. A total of 8 units was proposed, the first 4 to be propeller-type tur-

bines; the other 4 might be either propeller or Francis-type turbines. The generators were to be rated at 27,000 kilovolt-amperes, 90 percent power factor, 11,000 volts, 3-phase, 60-cycle, and 128.6 revolutions per minute. The voltage was to be stepped up to 154,000 volts by a bank of 24 transformers, each of 9,000 kilovolt-amperes capacity.

524. c. Estimated cost.—The estimated cost of the complete development, to be made in 10 stages is approximately \$110 per kilowatt.

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The Court: We have got to figure out the amount of the verdict on the tax portion of it. Have you worked out that?

Mr. Keith: Mr. Stoutemyer has been working on that, Your Honor. He would be in better position to state.

The Court: I just wanted it figured out before we got through here so we won't lose any time.

Mr. Paine: Now do you want to mark this for identifica- [136] tion? (Document taken from sealed envelope. Document marked Defendant The Washington Water Power Company's Exhibit for identification No. 1.)

The Court: Since there are no other parties, can't it be stipulated with the Clerk that all of the exhibits offered by The Washington Water Power Company can be entitled "Defendant's Exhibits"

and they can be distinguished from the other exhibits, which say "Defendant Ferry County" and "Defendant Stevens County"? There is no use writing in "Washington Water Power Company" on each exhibit. Let the record show that any exhibits which say "Defendant's Exhibit," whatever the number is, are the exhibits offered by the defendant The Washington Water Power Company. Is that satisfactory?

Mr. Keith: Yes, that is satisfactory, Your Honor.

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#### Offer of Proof No. 29

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers in evidence Defendant's Exhibit for identification 1, being a copy of the preliminary permit for Project No. 229 granted by the Federal Power Commission to the defendant, The Washington Water Power Company, to prove the issuance of said preliminary permit for Project No. 229 by the Federal Power Commission to the defendant, The Washington Water Power Company. Said permit for Project No. 229 being Defendant's identification No. 1, is hereby offered in evidence in connection with this offer of proof and as one of the documents covered by the stipulation now on file herein, the terms of which stipulation are likewise made part of this offer of proof.

Mr. Keith: Objected to on the general grounds.

The Court: Objection sustained and exception allowed. [137]

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### Offer of Proof No. 30

Mr. Paine:

*Mr. Paine:* I will ask the Clerk to remove from the envelope and mark Defendant's Exhibit 2 for identification, the copy of the application for a Federal Power Commission license. (Exhibit so removed and so marked) I suppose these witnesses can be excused.

Mr. Keith: I will make no objection to the offers of proof that the witnesses are not here at the time their names are called.

The Court: All right.

(Whereupon, the witnesses designated in the offers of proof were excused and the jury was excused until Tuesday morning, September 23, 1941.)

Mr. Paine: Comes now the defendant, The Washington Water Power Company, and offers in evidence a copy of application for a Federal Power Commission license, Defendant's Identification No. 2, for the purpose of showing said application was made to the Federal Power Commission, said copy of said application being marked Defendant's Exhibit 2 for identification, and is hereby offered in evidence in connection with this offer of proof as one of the documents covered by the stipulation re: evidence now on file herein, and deposited



with the Clerk of the court under the terms of the said stipulation.

Mr. Keith: Objected to on the general ground.

The Court: Objection sustained and exception allowed.

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Offer of Proof No. 31

Mr. Paine:

Comes now the defendant, The Washington Water Power Com- [138] pany, and offers to prove by the witness W. F. Miller, who is present in the court room and has been sworn as a witness, that the witness, W. F. Miller, is the comptroller of The Washington Water Power Company and as such it is a part of his duties to keep a record of all of the expenditures and costs of the Washington Water Power Company; that the books and records of The Washington Water Power Company show that the said company has expended the sum of \$156,043.33 for the acquisition of the lands at Kettle Falls; that after deducting from said amount the stipulated and agreed value, to-wit, \$7,610, the value of the land not taken by the Government, which was originally purchased as a part of the Kettle Falls tract, the net original investment as represented by the purchase price of the land involved in this proceeding was on the 9th day of December, 1939, exclusive of interest and taxes, the sum of \$148,433.33.

Mr. Keith: Objected to upon the general ground and upon the special ground that the investment of

the company in the land not taken is not proper material testimony as to the fair market value of the lands which were taken.

The Court: Sustain the objection on the general ground and allow an exception, and overrule the special objection.

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### Offer of Proof No. 32

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness W. F. Miller, who is present in the court room and who has been sworn as a witness, that the books and records of the Washington Water Power Company show that in addition to said sum expended for the purchase price of said land there has been expended for exploration, general engineering, surveying and other work in connection with [139] the development of the project the further sum of \$317,352.64.

Mr. Keith: Objected to upon the general ground and the special ground that the additional investment and cost to the landowner is not material on the question of the fair market value of the land.

The Court: Sustain the general objection and allow an exception, and overrule the special objection.

## Offer of Proof No. 33

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness W. F. Miller, who is present in the court room and who has been sworn as a witness, that in addition to the sums invested in the purchase price of said lands and for exploration, general engineering, surveying and other work in connection with the development of the Kettle Falls project, the sum of \$66,832.90 was spent for taxes and fees in connection with water rights on said Kettle Falls hydro-electric project.

Mr. Keith: Objected to on the general ground and upon the special ground that the expenditures of the landowner by way of taxes paid and fees paid for water rights are not material on the question of the fair market value of the lands taken.

The Court: Sustain the general objection and allow an exception, and sustain the special objection and allow an exception.

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## Offer of Proof No. 34

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness W. F. Miller, who is present in the court room and who has been sworn as a witness, [140] that the sum of \$156,043.33 paid by the defendant, The Washington Water Power Company, for the

lands involved in this proceeding was a reasonable price for said land at the time it was purchased by the defendant, The Washington Water Power Company, in 1921.

Mr. Keith: Objected to on the general ground and objected to on the special ground that the witness Miller is not shown to be competent to testify to the fair market value of the lands at the time of their acquisition.

The Court: Would there be testimony showing what knowledge the comptroller of the company has? He might not have any knowledge of the reasonable market value of lands. Comptrollers usually don't have.

Mr. Paine: I will be frank with the Court. I won't have any special qualification of Mr. Miller other than his comptrollership.

The Court: I will sustain the general objection and allow an exception and sustain the special objection and allow an exception.

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#### Offer of Proof No. 35

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the Witness K. M. Robinson, who is present in the court room and who has been called and sworn as a witness, that the witness K. M. Robinson is president of The Washington Water Power Company, owner

of the land sought to be condemned; that he has been president of said company since June, 1938; that prior to said time he was president of the Idaho Power Company located in southern Idaho; that he has [141] spent his entire life since the age of eighteen in the power business, that he is familiar with the lands involved in this proceeding which are the subject of this litigation; that said lands were purchased by The Washington Water Power Company in 1921, for the sum of \$156,043.33; that the lands purchased at that time consisted of a tract of approximately 800 acres; that all of said lands at that time had little value for agriculture or timber purposes.

Mr. Keith: Objected to on the general ground and upon the special ground that the cost of the land to The Washington Water Power Company is not material upon the question of their fair market value.

The Court: Sustain the general objection and allow an exception; overrule the special objection.

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Offer of Proof No. 36

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room and who has been sworn as a witness, that when the said land was acquired by The Washington Water Power Company, the purchase price



thereof was fixed by the buyer and seller on the basis of suitability and adaptability of said land for the purpose of building a dam and hydro-electric development and on the reasonable likelihood that said dam could and would be built.

Mr. Keith: Objected to on the general ground and upon the special ground there is nothing in the offer of proof that shows that the witness Robinson participated in or had any knowledge concerning the basis upon which the sale of the lands in question was made. [142]

The Court: How could Mr. Robinson know about what happened in 1921?

Mr. Paine: Well, only from his knowledge as president of the company and the transactions and official documents in the possession of the company which he as president has reviewed and is familiar with. Of course, the president is dead and most of the Power Commission are dead who were in existence at that time. It seems to me that he can testify to that fact from his familiarity with the records and official correspondence of the company. It would be a question of proving on cross-examination as to whether or not they were bought for agricultural purposes rather than hydro-electric purposes.

The Court: I will sustain the objection on the general ground and allow an exception and overrule the objection on the special ground.

## Offer of Proof No. 37

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room and who has been sworn as a witness, that on December 9, 1939, The Washington Water Power Company had grown to a point where its ability to produce electric energy was less than the demands of the customers. In the ordinary course of events a power company such as The Washington Water Power Company must make arrangements to provide additional sources of power to take care of increasing demands; that on December 9, 1939, it was imperative that the company develop an additional source of power; that had the Government not authorized and established the Grand Coulee project, The Washington Water Power Company would have continued with the [143] development of and entered upon the construction of the power project at Kettle Falls on or before December 9, 1939.

Mr. Keith: The offer is objected to on the general ground.

The Court: I will sustain the objection on the general ground and allow an exception.

## Offer of Proof No. 38

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room and who has been sworn as a witness, that he is familiar with power sites in the northwest and he knows what such sites have been bought and sold for, and by reason of his experience as president of the Idaho Power Company and The Washington Water Power Company, he is familiar with power sites and the prices for which they are bought and sold. Due to his connection with the power industry he is familiar with what other companies in the northwest have paid to secure power sites.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection, and allow an exception.

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## Offer of Proof No. 39

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room, and who has been sworn as a witness, that The Washington Water Power Company has expended the sum of \$148,433.33 for the purchase of the lands involved in this proceeding, and in addition to that The Washington Water Power Company has expended the sum of \$317,352.64 for exploration, [144]

general engineering, surveying and other work in connection with the development of the project; that all such expenditures represent a legitimate net investment of The Washington Water Power Company in the sum invested in the property; that the total legitimate net investment on December 9, 1939, was \$465,785.97; that had The Washington Water Power Company been granted a license to develop this project by the Federal Power Commission it would have been permitted to capitalize its legitimate net investment in the property, but would have been permitted to capitalize or earn no sum in excess of its legitimate net investment in the property.

Mr. Keith: Objected to on the general ground and in addition upon the special ground that the expenditures of the company in connection with the acquisition and development of this land and this legitimate net investment, so-called, in the lands are not material on the question of fair market value.

The Court: Sustain the objection on the general ground and allow an exception; overrule the special objection.

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#### Offer of Proof No. 40

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room

and who has been sworn as a witness, that interest on the sum of the total legitimate investment of \$465,785.97 for a period of three years prior to December 9, 1939, at the rate of six percent per annum, amounted to \$83,841.47; that the total net investment plus interest for a three-year period amounted to \$549,627.44.

Mr. Keith: Objected to upon the general ground and upon the special ground that the evidence offered is not material [145] upon the question of fair market value and that the interest at six percent per annum for a period of three years prior to December 9, 1939, has no tendency to establish the fair market value.

The Court: Sustain the objection on the general ground and allow an exception, and sustain the objection on the special ground and allow an exception.

Mr. Paine: I might just say for Your Honor's consideration that the theory on which we are interested on the second ground is that the rules and regulations of the Federal Power Commission under the Federal Power Act permits the capitalization of the cost during the three-year period prior to construction and during the period of construction, legitimate interest at the rate of six percent to be capitalized on those projects, our theory being that one of the elements that would enter into the determination of a buyer would be the fact that if he got his property and had to get his license he would be limited by the rules and regulations of



the Federal Power Act as to the amount of money at which he could capitalize his purchase and that that element would be an element which the buyers would consider and would be an element entering into the fair market value in that way where it would not enter into the fair market value of a piece of property where it wasn't subject to the restrictions as to capitalization and use that under the Federal Power Act applies. The general rule is that you can't add the interest as an element of the market value of your property in an ordinary building and that sort of thing, our theory being that if the value didn't change with the granting of the license that these facts are known and taken into consideration by the buyer and that we would be entitled to say [146] what the minimum capitalized value that he could put in would be and that would enter into his thought as to what would be fair and what he could afford to pay.

The Court: I will let my ruling stand and allow an exception.

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. Offer of Proof No. 41

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room and who has been sworn as a witness, that he is president of the Washington Water Power Company, the owner of the lands involved in this pro-

ceeding; that he is familiar with the fair market value of those lands on December 9, 1939; that taking into consideration all of the uses for which the lands are suitable and adaptable and to which they may be devoted in the reasonably near future, and taking into consideration the likelihood or lack of likelihood that the necessary permits and consents from the Federal Government could be obtained to use said lands for a dam site or hydro-electric development, that in his opinion the reasonable market value of this property on December 9, 1939, was \$549,627.44; and further, that he was president of the company on December 9, 1939 as well as the present time.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and allow an exception.

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#### Offer of Proof No. 42

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that he is a civil and hydraulic engineer employed by Ebasco [147] Services, Incorporated, 2 Rector Street, New York City; that he is a licensed professional engineer in the State of New York, a member of the American Society of Civil Engineers and a member of the committee on power plant design and

has written papers on power plant investigations and design for both the American Society of Civil Engineers and the American Society of Mechanical Engineers; that he became a member of the engineering department of the Electric Bond and Share Company in 1912, and since that time he has been connected with this company or its service companies continuously, rendering services to a large number of client public utility companies, including The Washington Water Power Company, since 1928; that he has held successively the positions of draftsman, designer, assistant hydraulic engineer and civil and hydraulic engineer; that during this period of twenty-nine years he has worked on the design and construction of over forty-five hydro-electric developments, having a total in solid capacity of 675,000 kilowatts, and the design and construction of the condensing water works, foundations and building superstructures for approximately 1,000,000 kilowatts of steam and Diesel electric stations in sixteen states and ten foreign countries; that at the present time he is in responsible charge of the design work on three hydro-electric stations in foreign countries and the civil engineering design features involved in the installation of thirteen additional steam-electric units in this country, having an approximate capacity of 400,000 kilowatts; that he has participated in, supervised and directed a great many studies regarding hydro-electric and steam-electric developments to deter-

ceeding; that he is familiar with the fair market value of those lands on December 9, 1939; that taking into consideration all of the uses for which the lands are suitable and adaptable and to which they may be devoted in the reasonably near future, and taking into consideration the likelihood or lack of likelihood that the necessary permits and consents from the Federal Government could be obtained to use said lands for a dam site or hydro-electric development, that in his opinion the reasonable market value of this property on December 9, 1939, was \$549,627.44; and further, that he was president of the company on December 9, 1939 as well as the present time.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and allow an exception.

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#### Offer of Proof No. 42

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that he is a civil and hydraulic engineer employed by Ebaseco [147] Services, Incorporated, 2 Rector Street, New York City; that he is a licensed professional engineer in the State of New York, a member of the American Society of Civil Engineers and a member of the committee on power plant design and

has written papers on power plant investigations and design for both the American Society of Civil Engineers and the American Society of Mechanical Engineers; that he became a member of the engineering department of the Electric Bond and Share Company in 1912, and since that time he has been connected with this company or its service companies continuously, rendering services to a large number of client public utility companies, including The Washington Water Power Company, since 1928; that he has held successively the positions of draftsman, designer, assistant hydraulic engineer and civil and hydraulic engineer; that during this period of twenty-nine years he has worked on the design and construction of over forty-five hydro-electric developments, having a total in solid capacity of 675,000 kilowatts, and the design and construction of the condensing water works, foundations and building superstructures for approximately 1,000,000 kilowatts of steam and Diesel electric stations in sixteen states and ten foreign countries; that at the present time he is in responsible charge of the design work on three hydro-electric stations in foreign countries and the civil engineering design features involved in the installation of thirteen additional steam-electric units in this country, having an approximate capacity of 400,000 kilowatts; that he has participated in, supervised and directed a great many studies regarding hydro-electric and steam-electric developments to deter-



mine their value, economy and feasibility in interconnected power systems; that he graduated from the civil [148] engineering department of Worcester Polytechnic Institute in 1912; that at present he is in charge of the civil engineering department of Ebasco Services, Incorporated, and is responsible for hydraulic and civil engineering investigations, preliminary studies, design and engineering supervision of construction of structures used in the extension and operation of public utility properties; that there are over 100 engineers and draftsmen directly under his supervision; that his department supervises and constructs field investigations of undeveloped hydro-electric projects, prepares reports and makes economic studies so as to advise the management of the various client public utilities companies in regard to the acquisition, development, extension and operation of public utility properties; that he has personally conducted a great number of investigations of potential power sites and that in recent years the preparation of reports and economic studies has constituted a very appreciable percentage of the total work under his supervision; that he has investigated over 100 potential water power developments and compared them in many cases with alternative sources in order to determine the relative economic merit of these alternative sources; that since 1913 he has worked on several studies in connection with additional sources of power for the interconnected client companies in Oregon, Washington, Montana, Idaho and Utah.

Mr. Keith: I am willing to stipulate as to the qualifications of the witness. It seems that there is no offer of proof to prove anything there other than his qualifications. I am willing to stipulate that he is a qualified engineer.

The Court: I would overrule an objection. I think they are entitled to have their case before the Circuit Court on the [149] basis that they are capable of proving what they say.

Mr. Keith: I think so, too.

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### Offer of Proof No. 43

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that he is familiar with the practices of the Federal Power Commission in granting licenses for hydro-electric projects subject to Federal license; that he has appeared and testified before such commissions and knows the practices of the Commission in determining the legitimate net investment in connection with such projects; that he knows the amount of the expenditures made by The Washington Water Power Company for engineering, diamond drilling, surveys and other work in connection with the Kettle Falls project; that in his opinion all of such expenditures,

amounting to the sum of \$465,785.97, were legitimate, proper, and fair and reasonable.

Mr. Keith: Objected to on the general ground and upon the special ground that the opinion of the witness as to the reasonable expenditures in connection with the development of the property is not admissible or has no tendency to prove or disprove the fair market value of the land being taken in this proceeding.

The Court: I will sustain the general objection and allow an exception, and overrule the special objection.

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#### Offer of Proof No. 44

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is [150] present in the court room and who has been sworn as a witness, that he is familiar with the generating facilities, power resources and the growth of load of The Washington Water Power Company; that he has participated in a number of studies to determine what additional economical power sources are available to The Washington Water Power Company; that some of the investigations and studies leading up to the development, as well as the designs, of the Hood River hydro-electric plant of the Pacific Power and Light Company, the Lewiston hydro-electric plant of The Washington Water Power Company, the Morony

and Flathead hydro-electric plant of the Montana Power Company and the Ariel hydro-electric plant of the Inland Power and Light Company were carried out under his supervision; that utilizing United States geological survey records of stream flow of the Columbia River at Kettle Falls covering a period from 1913 to 1939, and utilizing the hydraulic head to be developed at that site, the average monthly power available at Kettle Falls was determined for the initial, intermediate and ultimate stages of said development.

Mr. Keith: Objected to on the general grounds.

The Court: Objection sustained and exception allowed.

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#### Offer of Proof No. 45

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that he studied the load of The Washington Water Power Company, of eight interconnected public utilities in the northwest, and of the entire public utility load in the States of Montana, Washington and Oregon over the entire period for which records [151] are available; that the output of the Kettle Falls plant would fit into the load requirements of The Washington Water Power system and would furnish additional low-cost power to its neighboring interconnected



systems; that under increasing load conditions which were apparent as early as 1937, the construction of the initial stage of Kettle Falls would have been undertaken at about that time; that this need for additional capacity and energy is proven by the purchases of power which The Washington Water Power Company has made from the Montana Power Company, Puget Sound Power and Light Company and from the Northwestern Electric Company since 1937; that under the present rate of load growth the output of the initial installation at Kettle Falls would have been absorbed by the inter-connected systems within approximately three years; that Kettle Falls is the one site on the Columbia River that lends itself best to levelopment in stages so as to meet growing load demands without entailing excessive investment costs when the plant is first built; that general layout plans have been prepared for the initial development, intermediate development and ultimate development; that the initial development will develop 42,000 kilowatts, the intermediate development 140,000 kilowatts, and the ultimate 360,000 kilowatts; that these plans have been prepared in sufficient detail to determine the present day cost of each stage of development; that the present day cost of the initial stage of development would be \$10,735,000; that the additional cost for the intermediate stage would be \$9,674,000, and an additional \$10,500,000 for the ultimate stage, making a total cost for the initial stage of \$10,735,000, for the second stage, \$20,409,000, and the ultimate



development, \$30,909,000; that for the ultimate [152] development the cost per kilowatt would be eighty-six dollars; that adding \$3,205,000 for the lands and rights not owned by The Washington Water Power Company would be \$34,114,000, or the equivalent of \$95.70 per kilowatt of installed capacity; that the present day costs are higher than the costs in 1939, but present day costs have been used because the construction period of such dam would be in the neighborhood of two to three years; that the cost of a 154 kilowatt transmission line from the site to Spokane would be \$1,381,400, including terminal stages facilities in Spokane; that the cost of energy from the initial stage development would be 2.3 mills at 100 percent load factor and 3.85 mills at sixty percent load factor; that the cost of energy for the combined initial and intermediate stages would be approximately 2.16 mills at sixty percent load factor; that the cost of energy for the ultimate development would be approximately 1.40 mills at sixty percent load factor; that the cost of power from Kettle Falls, even for the initial stage, would be reasonable and considerably below what the company has paid since December 1, 1939, and now pays for purchased power.

Mr. Keith: Objected to upon the general ground.

The Court: Objection sustained and exception allowed.

## Offer of Proof No. 46

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that based upon his experience in analyzing and evaluating water power sites on navigable and non-navigable streams, it is his judgment that the undeveloped Kettle Falls site in 1939 [153] had a value considerably in excess of the money already invested in the site, to-wit, \$465,785.57.

Mr. Keith: Objected to on the general ground.

The Court: Objection sustained; exception allowed.

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## Offer of Proof No. 47

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that the completion of the initial stage of development (42,000 kilowatts) would cause a substantial increase in the value of the site to The Washington Water Power Company.

Mr. Keith: Objected to on the general ground and upon the special ground that the increase in value due to the completion of the initial unit would not

have any tendency to prove the fair market value in December, 1939.

The Court: Sustain the objection on the general ground and allow an exception, and overrule the objection on the special ground.

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Offer of Proof No. 48

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that the cost of power from Kettle Falls initial stage would be reasonable and considerably below what the company has paid on and since December 9, 1939, and now pays for purchased power.

Mr. Keith: Objected to on the general ground and upon the special ground that the cost of power development in that project would be less than the company is paying now has no [154] tendency to establish a fair market value.

The Court: Sustain the general objection and allow an exception, and overrule the special objection. It seems to me that goes to the question of whether the company was ready and willing and able to develop this property in 1939.

## Offer of Proof No. 49

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that the uplands involved herein, because of their geographic formation and topographic features, making them adaptable for the support of hydro-electric structures, have a greater value for use in connection with the Kettle Falls project than have lands which are necessary for reservoir purposes in connection with this hydro-electric project.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and allow an exception.

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## Offer of Proof No. 50

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that the sum of \$156,043.33 paid by the defendant, The Washington Water Power Company, for the lands involved in this proceeding was a reasonable price for said lands at the time that they were purchased by the defendant, The Washington Water Power Company in 1921.

Mr. Keith: Objected to on the general ground

and the special ground that the price paid in 1921 is not material on [155] the question of the fair market value in 1939.

The Court: Sustain the objection on the general grounds and allow an exception; sustain the objection on the special ground and allow an exception.

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Offer of Proof No. 51

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that the lands of the defendant, The Washington Water Power Company, involved in this proceeding and for which the jury is to make an award in this proceeding, did, on the 9th day of December, 1939, have an enhanced market value because of their extent, particular location and relation to the Columbia River, the rock formation on said lands and other characteristics which might make said lands suitable and adaptable for a hydro-electric power development, and because of the value said lands would have as a part of and for use in connection with any undertaking to create a hydro-electric power development, part of which would be on said lands.

Mr. Keith: Objected to on the general grounds.

The Court: Sustain the objection and allow an exception.



## 、 Offer of Proof No. 52

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness J. P. Graves, who is present in the court room and who has been sworn as a witness, that he has lived in Spokane since 1887, and has been connected with large business enterprises, including the purchase, developing and maintaining of mining properties and power companies, [156] electric railroads and similar enterprises; that he has bought and sold six or seven power sites in the northwest; that he is generally familiar with all the power sites in eastern Washington, Northern Idaho and British Columbia and he was one of the early owners of the Kettle Falls site, and he knows about the various sales of the Kettle Falls site and is familiar with the site and with the purposes for which it can be used; that he is familiar with the fair market value on December 9, 1939, of the uplands of The Washington Water Power Company, located at Kettle Falls, involved in this proceedings, taking into consideration all the uses for which they are reasonably suitable and adaptable; that in his opinion the fair market value of said uplands of The Washington Water Power Company on December 9, 1939, was the sum of \$500,000.

Mr. Keith: Objected to upon the general ground.

The Court: Well, I suggest, Mr. Paine, that you separate that offer. On the other witnesses you had

their qualifications and there was no objection to them. Then on their subsequent testimony there was objection.

Mr. Paine: All right. I will break off the portion reading "and is familiar with the site and the purposes for which it can be used, as one offer, No. 52.

The Court: Do you object to the Offer 52?

Mr. Keith: If it ends at the point "and is familiar with the purposes for which it can be used," I have no objection and will stipulate that the witness Graves would so testify.

The Court: Then Defendant's No. 53 is the rest of it?

Mr. Paine: Yes.

Mr. Keith: I object to what is now No. 53 and what was [157] originally the last part of 52 upon the general ground.

The Court: Objection sustained and exception allowed.

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#### Offer of Proof No. 54

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness J. P. Graves, who is present in the court room and who has been sworn as a witness, that the sum of \$156,043.33 paid by the defendant, The Washington Water Power Company for the lands involved in this proceeding was a reasonable price for said lands at the time that they were purchased by the defend-

ant, The Washington Water Power Company in 1921.

Mr. Keith: Objected to on the general ground and objected to on the special ground that the fair market value of the lands in 1921 has no tendency to establish the fair market value of the lands on December 9, 1939.

The Court: I will sustain the objection on the general ground and allow an exception, and sustain the objection on the special ground and allow an exception. There is a distinction between the amount that they paid and whether or not it is a fair and reasonable value. One reason I would not permit the testimony as to the amount paid would be that it would meet with an argument such as was made by Mr. Keith, that they were just up there to get the prior right. I think they were there in good faith, that they paid \$150,000 and that it was a substantial sum of money, but the question of whether or not that was the fair and reasonable market value in 1921 has no bearing upon the fair market value in 1939. I will sustain the objection because of the fact that it goes to the value in 1921.

Mr. Paine: Our reason for offering it was that the cases [158] seemed to indicate that the prior sales of the identical property are always admissible in evidence unless so far removed in point of time as to make their admission of no value, and that their use for power sites is contradistinctive from ordinary wheat lands or something of that sort. We will offer to prove by Mr. Graves that the lapse of

time from 1921 to 1941 is not a disqualifying factor, that power sites generally have become scarcer as the growth of the communities increased, and the demand for them have become greater and they have tended to increase in value over what they were worth at that time. Most of the authorities hold that the sale of the identical property is admissible unless it is so far removed as to throw no light on the value of the property at the present time, and we felt that on a power site such as this a great deal longer lapse of time is permissible than in the sale of wheat or stock or general farms, and that the sale price did reflect the value of the land. It is one element at least for the jury to consider.

The Court: I will sustain the objection and allow an exception.

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### Offer of Proof No. 55

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness J. P. Graves, who is present in the court room and who has been sworn as a witness, that he is familiar with power site values in the State of Washington as of December 9, 1939; that the demand for power was greater on December 9, 1939 than it was during the year 1921, and that power site values were generally higher in the State of Washington on December 9, 1939 than they were during [159] the year 1921.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and allow an exception.

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Offer of Proof No. 56

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness J. P. Graves, who is present in the court room and who has been sworn as a witness, that in the opinion of said witness the highest use to which the lands involved in this proceeding could be devoted would be as abutments for dams in connection with hydro-electric development; that the market value of these lands is not determined by the whole value of said hydro-electric development, or by use of the waters of the Columbia River in connection therewith, but is only the value of the land as abutment lands taking into consideration all the facts in regard to the development and cost of the development and the amount of power that can be developed at the property; and likewise taking into consideration the likelihood or lack of likelihood of obtaining the necessary license from the Federal Power Commission by which authority to construct a hydro-electric project using these lands could be obtained in the reasonably near future; and the likelihood or lack of likelihood that other necessary consents to complete said hydro-electric project could be obtained at a reasonable cost in the reasonably near future;



that he is familiar with the fair market value of these lands based upon a consideration of the use of such lands as abutment for dams in connection with a hydro-electric development; that the fair market value of the lands determined by a purchaser willing to purchase but not compelled to purchase and a seller willing to [160] sell but not compelled to sell, both having in mind all of the considerations above set forth by the witness, would in his opinion be as of December 9, 1939, \$500,000.

Mr. Keith: Objected to on the general grounds.

The Court: Objection sustained and exception allowed.

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#### Offer of Proof No. 57

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness J. P. Graves, who is present in the court room and who has been sworn as a witness, that the lands of the defendant, The Washington Water Power Company involved in this proceeding and for which the jury is to make an award in this proceeding, did on the 9th day of December, 1939, have an enhanced market value because of their extent, particular location and relation to the Columbia River, and the rock formation on said lands, and because of the value said lands would have as a part of and for use in connection with any undertaking to create a hydro-electric power development, part of which would be on said lands.

Mr. Keith: Objected to on the general grounds.

The Court: Objection sustained and exception allowed.

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Offer of Proof No. 58

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness J. P. Graves, who is present in the court room and who has been sworn as a witness, that the witness J. P. Graves purchased the lands involved in this action in 1906 for the sum of \$80,000 immediately upon the lands in Ferry County being released to public ownership upon the opening of the Colville Indian Reservation; that the lands [161] purchased by him at that time were purchased for the purpose of their use as abutments for hydro-electric developments or dams in the Columbia River; that the lands at that time had little or no value for agricultural, grazing or other purposes; that the lands were sold by him in the year 1912 to the Granby Consolidated Mines Company for the sum of \$100,000; that the lands so sold were sold for the purpose of use as lands for the abutment of a power site development at Kettle Falls to be made by the Granby Consolidated Mining Company for use in connection with their copper mining activities; that he was a member of the Board of Directors of the Granby Consolidated Mining Company; that the Granby Company sold these lands to The Wash-

ington Water Power Company in the year 1921 for the sum of approximately \$150,000.

Mr. Keith: Objected to upon the general ground and upon the special ground that the purpose for which the lands were purchased by the witness Graves or the purpose for which the lands were sold by the witness Graves to the Granby Company and the figures on which the several sales were consummated are not admissible as having any tendency to establish the fair market value of the lands on December 9, 1939.

The Court: Sustain the objection on the general ground and allow an exception, and overrule the objection and allow an exception on the special ground.

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Offer of Proof No. 59

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that the witness O. B. Shay is right-of-way agent for the [162] Puget Sound Power and Light Company, residing at Wenatchee, Washington; that he has been dealing in the sale and purchase of lands in connection with his duties with the Puget Sound Power and Light Company for many years; that he is familiar with the market value of land for general purposes and for power site purposes in eastern Washing-

ton; that he is familiar with the lands involved in this proceeding and for which the jury is to make an award in this proceeding; that he was familiar with and knew the market value of said property on December 9, 1939.

Mr. Keith: I am going to object to that offer of proof on the ground that the qualifications of the witness as an expert and the determination of values such as are involved in the offer of proof are not sufficient to conform to the offer.

Mr. Paine: Well, maybe I can extend it a little bit. The defendant will show further that Mr. O. B. Shay—will offer to prove by the witness O. B. Shay, that his familiarity with power site values arose from his connection with the purchase of the property in connection with the power site development by the Puget Sound Power and Light Company at Rock Island on the Columbia River in the State of Washington, which project was a licensed Federal project; that he has also studied and is familiar with values and the sale price of the power site located at Chelan, owned by The Washington Water Power Company, the power site located on the Spokane River, the power site located and owned by the Inland Power Light Company at Ariel in the State of Washington.

Mr. Keith: I renew my objection.

The Court: Overrule the objection.

Mr. Herman: The objection having been overruled, will Mr. [163] Keith stipulate that the wit-

ness will so testify or will we call him and put him on the stand and have him so testify?

Mr. Keith: I will stipulate that he will testify to the points which have been mentioned by Mr. Paine.

The Court: Very well, let the record show.

Mr. Keith: May we have an exception to Your Honor's ruling?

The Court: Exception allowed.

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Offer of Proof No. 60

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that in the opinion of the said witness the said land is suitable and adaptable for use in connection with the development of hydro-electric power, and that in his opinion said property would have been devoted to said use on the 9th of December, 1939, or within the reasonably near future thereafter, had it not been for the Act passed by Congress on August 30, 1935, authorizing and approving the Grand Coulee Dam.

Mr. Keith: We object to that on the general ground and upon the special ground that the testimony offered would be merely a conclusion of the witness.

The Court: Sustain the objection on the general ground and allow an exception; sustain the objection on the special ground and allow an exception.



## Offer of Proof No. 61

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is [164] present in the court room and who has been sworn as a witness, that the witness is familiar with the Rock Island site owned by the Puget Sound Power and Light Company on the Columbia River near Wanatchee, Washington; that said power site is similar in all essential respects to the power site of the defendant at Kettle Falls, Washington; that said power site is located on the same river, which is a navigable stream; that it was necessary to secure permission from the Federal Power Commission to develop the Rock Island site; that one of the elements to be taken into consideration in determining the value of land adaptable or suitable for a power site is the amount of horsepower which it would be reasonably possible to develop at such site; that, generally speaking, the construction problems and the available market conditions at the Rock Island site and the Kettle Falls site were on December 9, 1939 so familiar that the relative value per horsepower for each site is the same; that the witness is familiar with the prices that were actually paid for the lands in the Rock Island dam site; that the lands on either side of the Columbia River on which stand the abutments of the Rock Island Dam, and the island in the middle of the river at said Rock Island damsite, were purchased for \$120,000 by the Puget Sound Power and

Light Company in 1929; that the said lands on either side of the river on which stand the abutments of the Rock Island dam were purchased by the Puget Sound Power and Light Company before it received any license from the Federal Power Commission to develop any hydro-electric power at this point.

Mr. Keith: Objected to on the general ground and upon the special ground that the testimony of the witness as to the acquisition of the power site at Rock Island dam does not have [165] any tendency to establish the fair market value of the site in this case or the lands in this case; furthermore, upon the special ground that the fact that the lands at Rock Island were purchased prior to the issuance of a license by the Federal Power Commission is not material in the determination of the fair market value of the lands.

The Court: Sustain the objection on the general grounds and allow an exception; overrule the objection on the special ground.

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Offer of Proof No. 62

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that in the opinion of said witness the fair market value of said prop-

erty on December 9, 1939, taking into consideration all of the uses for which it was available and adaptable, and to which it might be put in the reasonably near future after said date, was the sum of \$480,000.

Mr. Keith: Objected to on the general grounds.

The Court: Sustain the objection and exception allowed.

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### Offer of Proof No. 63

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that the lands of the defendant, The Washington Water Power Company, involved in this proceeding and for which the jury is to make an award in this proceeding did on the 9th day of December, 1939, have an enhanced market value because of their [166] extent, particular location and relation to the Columbia River, the rock formation on said lands, and other characteristics which might make said lands suitable and adaptable for a hydro-electric power development, and because of the value said lands would have as a part of and for use in connection with any undertaking to create a hydro-electric power development, part of which would be on said lands.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and allow an exception.

## Offer of Proof No. 64

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that in the absence of unusual conditions, uplands adaptable and suitable for supporting abutments for dams have greater values for use in connection with hydro-electric projects than have lands which are necessary for reservoir purposes in connection with such hydro-electric projects.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and allow an exception.

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## Offer of Proof No. 65

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that the sum of \$156,043.33 paid by the defendant, The Washington Water Power Company for the lands involved in this proceeding was a reasonable price for said lands at the time that they were purchased by the defendant, The Washington Water [167] Power Company in 1921.

Mr. Keith: Objected to on the general ground and objected to on the special ground that the fair

market value of the lands in 1921 has no materiality to the market value of the lands on December 9, 1939.

The Court: Sustain the objection on the general ground and allow an exception; sustain the objection on the special ground and allow an exception.

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Offer of Proof No. 66

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that he is familiar with power site values in the State of Washington as of December 9, 1939; that the demand for power was greater on December 9, 1939 than it was during the year 1921, and that power site values were higher in the State of Washington on December 9, 1939, than they were during the year 1921.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and exception allowed.

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Offer of Proof No. 67

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that in the opinion



of said witness the highest use to which the lands involved in this proceeding could be devoted would be as abutments for dams in connection with hydro-electric development; that the market value of these lands is not [168] determined by the whole value of said hydro-electric development, or by use of the waters of the Columbia River in connection therewith, but is only the value of the lands as abutment lands taking into consideration all the facts in regard to the development and cost of the development and the amount of power that can be developed at the property; and likewise taking into consideration the likelihood or the lack of likelihood of obtaining the necessary license from the Federal Power Commission by which authority to construct a hydro-electric project using these lands could be obtained in the reasonably near future; and the likelihood or lack of likelihood that other necessary consents to complete such hydro-electric project could be obtained at a reasonable cost in the reasonably near future; that he is familiar with the fair market value of these lands based upon a consideration of the use of such lands as abutments for dams in connection with a hydro-electric development; that the fair market value of the land determined by a purchaser willing to purchase but not compelled to purchase and a seller willing to sell but not compelled to sell, both having in mind all of the consideration above set forth by the witness, would in his opinion be as of December 9, 1939, \$480,000.

Mr. Keith: Objected to on the general ground

and objected to on the additional ground that the witness has not established his competency to testify on that question.

The Court: Sustain the general objection and allow an exception; overrule the special objection.

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### Offer of Proof No. 68

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, [169] and offers to prove by the witness M. O. Leighton, who is present in the court room and who has been sworn as a witness, that for twenty-three years he was president of a land company, and during the years 1903 and 1904 was actively engaged in land valuations as Flood Commissioner in the State of New Jersey; has been examiner of lands for the United States Forest Reservation Commission in the acquisition of national forest lands in the Appalachian region of the eastern United States; that he was principal examiner of water power lands withdrawn in the public domain of the west under the Executive Order of 1908, and the Pickett Act of 1910; that as Consulting Engineer for the Pittsburgh Flood Commission he had extensive experience and observation with lands and land prices in western and central Pennsylvania in connection with the extensive reservoir system now being constructed for the protection from floods of Pittsburgh and Ohio River below

Pittsburgh; that he has participated in land studies, negotiations and purchases in connection with the development of many water power sites, and has made extensive studies of land costs and values as between Federal licensed and non-licensed projects; that from 1902 to 1906 he was attached to the U. S. Geological Survey as an engineer; that from 1906 to 1913 he was chief hydraulic engineer; that during his incumbency in that office, land work was carried on in connection with flood surveys and the effect thereof on land values; that for four years he was engaged in the determination of land values for water power production covering many states and rivers of the west. It was part of his duties to designate and inspect lands of the United States along western rivers believed to be suitable for withdrawal as [170] power reserves, and to make recommendation to the Federal Government according to his findings, that is, that in the case of lands not found suitable for water power, they be restored to public entry, and in case they were found suitable, they remain in power site reserve; that he worked on the Columbia River from the Canadian boundary to Pasco; that he is familiar with all of the land and land values on the Columbia River; that he is familiar with the lands involved in this suit and their fair market value for all purposes.

Mr. Keith: The offer is objected to upon the ground that by the terms of the offer the witness Leighton would not testify as to any general or

special familiarity with values of lands in this area or the value of power sites in this area.

The Court: Objection overruled and exception allowed the Government. Will you stipulate that if he were called on the stand that he would so testify?

Mr. Keith: To the extent mentioned in the offer, yes, Your Honor.

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Offer of Proof No. 69

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness M. O. Leighton, who is present in the court room and who has been sworn as a witness, that in the opinion of said witness the highest use to which the lands involved in this proceeding could be devoted would be as abutments for dams in connection with hydro-electric development; that the market value of these lands is not determined by the whole value of such hydro-electric development, or by use of the waters of the Columbia River in connection therewith, but is only the value of the lands as abutment lands [171] taking into consideration all the facts in regard to the development and cost of the development and the amount of power that can be developed at the property; and likewise taking into consideration the likelihood or the lack of likelihood of obtaining the necessary license from the Federal Power Commission by which authority to

construct a hydro-electric project using these lands could be obtained in the reasonably near future; and the likelihood or lack of likelihood that other necessary consents to complete such hydro-electric project could be obtained at a reasonable cost in the reasonably near future; that he is familiar with the fair market value of these lands based upon a consideration of the use of such lands as abutments for dams in connection with a hydro-electric development; that the fair market value of the lands as determined by a purchaser willing to purchase but not compelled to purchase and a seller willing to sell but not compelled to sell, both having in mind all of the considerations above set forth by the witness, would in his opinion be as of December 9, 1939, \$500,000.

Mr. Keith: Objected to on the general ground and upon the special ground that the qualifications of the witness to testify on the value of land in this area has not been established.

The Court: Sustain the objection on the general ground and allow an exception; overrule the objection on the special ground.

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#### Offer of Proof No. 70

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness M. O. Leighton, who is [172] present in the court



room and who has been sworn as a witness, that he is familiar with the practices of the Federal Power Commission in granting licenses for hydro-electric projects upon navigable rivers and Government land; that he has appeared and testified before said Commission in connection with the land costs and legitimate net investment of said projects, including at least thirteen major cases; that he is familiar with the practices of the Federal Power Commission in determining legitimate net investment in Federally licensed projects; that on the average the costs allowed for power site lands has averaged approximately \$39.00 per kilowatt of primary capacity; that the abutment lands necessary for the actual construction of powerhouse facilities are from six to seven times as valuable as the upstream storage lands; that this value has been consistently recognized, allowed and approved by the Federal Power Commission in the licensing of Federal power projects.

Mr. Keith: Objected to on the general ground and the special ground that one not connected with the Federal Power Commission cannot testify as to the policy of that Commission; furthermore, that some of the testimony offered would be purely speculative and constitute a conclusion of the witness as to what might or might not be done.

The Court: Sustain the objection on the general ground and allow an exception; overrule the objection on the special ground.

## Offer of Proof No. 71

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness M. O. Leighton, who is present in the court room and who has been sworn as a witness [173] that the lands of the defendant, The Washington Water Power Company, involved in this proceeding and for which the jury is to make an award in this proceeding did, on the 9th day of December, 1939, have an enhanced market value because of their extent, particular location and relation to the Columbia River, the rock formations on said lands, and other characteristics which might make said lands suitable and adaptable for a hydro-electric power development, and because of the value said land would have as a part of and for use in connection with any undertaking to create a hydro-electric power development, part of which would be on said lands.

Mr. Keith: Objected to on the general ground and the special ground that it is incompetent as to the qualifications of the witness.

The Court: Objection sustained and exception allowed on the general ground; overruled on the special ground.

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## Offer of Proof No. 72

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness

M. O. Leighton, who is present in the court room and who has been sworn as a witness, that he has been familiar with the practices of and the policies of the United States Government for more than forty years; that the policy of the Government in connection with the development of economically feasible power projects upon Government lands or on navigable streams under the control of the Government has been to encourage and promote development of these projects under proper restrictions and licenses; that the likelihood of obtaining necessary permissions and consents to develop these projects is one of the elements considered by [174] prospective purchasers and owners of said sites and is one of the elements entered into in determining the fair market value of the said sites; that he is familiar with the practices and policies of the Federal Power Commission in connection with the granting of licenses for the development of power sites on the Columbia River; that the Federal Power Commission has granted licenses to private capital to own and develop a power site at Rock Island on the Columbia River and that such fact would be given consideration by the purchasers of power site land adjacent to the Columbia River.

Mr. Keith: Objected to on the general ground and on the special ground that the testimony offered is speculative and based upon the opinion of this witness as to the policy of the Federal Power Commission.

The Court: Sustain the objection on the general ground and allow an exception, and overrule the objection on the special ground.

Mr. Herman: At this time, if the Court please, before court adjourns, I have served copies of the proposed instructions and served copies upon opposing counsel. Counsel for the Government told me I would not need copies for them and I believe two copies are all that you require. I hand herewith two copies to the clerk.

(Wherefore, the case was adjourned at 12:15 P. M. on September 22, 1941 to 9:30 A. M. on September 23, 1941, when the trial was resumed and the following proceedings were had:) [175]

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### Proceedings of September 23, 1941

The Court: Gentlemen, I call your attention to Page 2 of the pre-trial stipulation, Line 8: "It is agreed that on the date of the entry of the judgment on Declaration of Taking herein entered December 9, 1940."

Mr. Paine: I think that we both agree that should be "1939."

The Court: May it be stipulated that the stipulation may be amended?

Mr. Keith: Yes.

## Offer of Proof No. 73

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness M. O. Leighton, who is present in the court room and who has been sworn as a witness, that he knows the amount of expenditures made by The Washington Water Power Company for engineering, diamond drilling, surveys and other work in connection with the Kettle Falls project, including the acquisition of the necessary abutment lands; that the lands involved in this proceeding, including expenditures amounting to the sum of \$465,785.97, in his opinion are legitimate, proper, fair and reasonable and would be allowed as legitimate net investment if said projects were to be licensed.

Mr. Keith: The offer is objected to upon the general ground stated yesterday and upon the special ground that the testimony would be predicated upon the expenditures made by the landowners.

The Court: The objection on the general ground is sustained and exception allowed, and the objection on the special [176] ground is overruled.

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## Offer of Proof No. 74

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness M. O. Leighton, who is present in the court room



and who has been sworn as a witness, that the sum of \$156,043.33 paid by the defendant, The Washington Water Power Company, for the lands involved in this proceeding was a reasonable price for said lands at the time that they were purchased by The Washington Water Power Company in 1921.

Mr. Keith: Objected to on the general ground and upon the special ground that the fair value of the land in 1921 is not in issue in this proceeding.

The Court: The objection is sustained on the general ground and exception allowed, and the objection is sustained on the special ground and exception allowed.

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#### Offer of Proof No. 75

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness M. O. Leighton, who is present in the court room and who has been sworn as a witness, that he is familiar with power site values generally throughout the United States as of December 9, 1939; that the demand for power sites was greater in the State of Washington on December 9, 1939 than it was in 1921; and that said power site values were higher throughout the United States and in the State of Washington on December 9, 1939 than they were in 1921.

Mr. Keith: Objected to on the general ground and upon the special ground that the offered testi-

mony is obviously based upon [177] the price paid by The Washington Water Power Company in 1921, and therefore is inadmissible as evidence.

The Court: The objection is sustained on the general ground and exception allowed, and the objection is overruled on the special ground.

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### Offer of Proof No. 76

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the official records and reports of the Federal Power Commission:

That it has been the policy of the Federal Power Commission to encourage the development of power sites upon navigable streams by financially responsible parties.

That where the facts and circumstances surrounding the development of the power site show that the party applying therefor has the necessary financial backing to develop the site, that the amount of electricity can be properly used and disposed of, the policy of the Commission has been to grant such application.

Mr. Keith: Objected to on the general ground and upon the special ground that there is not sufficient identification of the reports and documents of the Federal Power Commission in order to make it possible to determine whether or not such reports indicate any such general policy.

The Court: The objection on the general ground is sustained and exception allowed, and the objection on the special ground is overruled.

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Offer of Proof No. 77

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, [178] and offers to prove by the witness K. M. Robinson, who is present in the court room and who has been sworn as a witness, that The Washington Water Power Company is a public utility company organized and existing under the laws of the State of Washington; that it is a subsidiary company of the American Power and Light Company and a member of the Electric Bond and Share Company system; that on December 9, 1939, the Washington Water Power Company had sufficient assets and financial backing to have obtained the funds necessary to finance the construction of the Kettle Falls project.

Mr. Keith: Objected to on the general grounds.

The Court: Sustain the objection and exception allowed.

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Offer of Proof No. 78

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness

K. M. Robinson, who is present in the court room and who has been sworn as a witness, that he is president of The Washington Water Power Company, was such president on December 1, 1939, and has been at all times since; that on December 31, 1939, the Washington Water Power Company had book assets of \$76,235,798.39; that it had a surplus of \$4,775,246.79; that it had a bonded indebtedness of \$22,000,000; that it had refinanced its bonded indebtedness in June, 1939, and had issued and sold \$22,000,000 of first mortgage bonds bearing three and a half percent interest.

Mr. Keith: Objected to on the general ground and on the special ground that the financial standing of the company at the time the declaration was taken would have no tendency to establish the fair market value of the property that is being [179] condemned.

The Court: Objection sustained on the general ground and exception allowed; objection overruled on the special ground.

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Offer of Proof No. 79

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room and who has been sworn as a witness, that The Washington Water Power Company is a public

utility company organized and existing under the laws of the State of Washington; that the company has total book assets of \$76,235,798.39 as of December 31, 1939; that it had a surplus of \$4,775,246.79; that it had a bonded indebtedness of \$22,000,000; that it had refinanced its bonded indebtedness in June, 1939, and had issued and sold \$22,000,000 of first mortgage bonds bearing three percent interest; that as of December 9, 1939, The Washington Water Power Company was engaged in the production and distribution and sale of electric energy in the territory of eastern Washington and northern Idaho; that the property of Kettle Falls was held by the company as part of its total electrical system for use and development as a hydro-electric project as soon as the needs and demands of the company required its construction.

Mr. Keith: Objected to on the general ground.

The Court: Objection sustained and exception allowed.

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Offer of Proof No. 80

Mr. Paine:

Comes now the defendant, The Washington Water Power Company and offers to prove by the official records and reports of the Federal Power Commission: [180]

That the Federal Power Commission has granted many licenses for the development of hydro-electric power plants upon navigable streams; that among the principal ones so granted are the following:



Henry Ford & Son (Inc.), Hudson River

Alabama Power Co., Coosa River

South Carolina Pub. Ser. Authority, Santee and Cooper Rivers

Louisville Gas & Electric Co., Ohio River

Minnesota Power & Light Co., Mississippi River

Alabama Power Co., Tallapoosa River

Ford Motor Company, Mississippi River

Susquehanna Power Co. & Philadelphia Electric Co., Susquehanna River

Lexington Water Power Co., Saluda River

Puget Sound Power & Light, Columbia River

Safe Harbor Water Power Co., Susquehanna River.

Mr. Keith: Objected to on the general ground.

The Court: Sustain the objection and exception allowed.

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### Offer of Proof No. 81

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness J. P. Graves, who is present in the court room and who has been sworn as a witness, that all feasible power sites upon navigable rivers have in their natural state an enhanced market value due to the knowledge which is generally prevalent among customers for feasible power sites; that the Federal Power Commission will in all probability grant a license to an applicant financially capable of de-

veloping said site, and that such reasonable probability [181] of such license being granted by the Federal Power Commission increases the market value of said property over and above its value for agricultural and other purposes.

Mr. Keith: Objected to on the general ground.

The Court: Objection sustained and exception allowed.

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### Offer of Proof No. 82

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness A. T. Larned, who is present in the court room and who has been sworn as a witness, that all feasible power sites upon navigable rivers have in their natural state an enhanced market value due to the knowledge which is generally prevalent among customers for feasible power sites; that the Federal Power Commission will in all probability grant a license to an applicant financially capable of developing said site, and that such reasonable probability of such license being granted by the Federal Power Commission increases the market value of said property over and above its value for agricultural and other purposes.

Mr. Keith: Objected to upon the same general ground.

The Court: Objection sustained and exception allowed.

## Offer of Proof No. 83

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness M. O. Leighton, who is present in the court room and who has been sworn as a witness, that all feasible power sites upon navigable rivers have in their natural state an enhanced market value due to the knowledge which is generally prevalent among customers for feasible power sites; that the Federal Power Commission will in [182] all probability grant a license to an applicant financially capable of developing said site, and that such reasonable probability of such license being granted by the Federal Power Commission increases the market value of said property over and above its value for agricultural and other purposes.

Mr. Keith: Objected to upon the same general ground.

The Court: Objection sustained and exception allowed.

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Offer of Proof No. 84

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness K. M. Robinson, who is present in the court room and who has been sworn as a witness, that all feasible power sites upon navigable rivers have in their natural state an enhanced market value due to the

knowledge which is generally prevalent among customers for feasible power sites; that the Federal Power Commission will in all probability grant a license to an applicant financially capable of developing said site, and that such reasonable probability of such license being granted by the Federal Power Commission increases the market value of said property over and above its value for agricultural purposes.

Mr. Keith: Objected to upon the same general ground.

The Court: Objection sustained and exception allowed.

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#### Offer of Proof No. 85

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and offers to prove by the witness O. B. Shay, who is present in the court room and who has been sworn as a witness, that all feasible power sites upon navigable rivers have in their natural state an enhanced market value due to the knowledge [183] which is generally prevalent among customers for feasible power sites; that the Federal Power Commission will in all probability grant a license to an applicant financially capable of developing said site, and that such reasonable probability of such license being granted by the Federal Power Commission increases the market value of

said property over and above its value for agricultural purposes.

Mr. Keith: The objection is made upon the same general ground and on the special ground that the witness is not competent to testify.

The Court: Objection sustained on the general ground and exception allowed; objection overruled on the special ground.

(Defendant's Exhibit No. 3 for identification marked)

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#### Offer of Proof No. 86

Mr. Paine:

At this time the defendant, The Washington Water Power Company offers as its Offer of Proof No. 86 a document consisting of a photostatic copy of letter from O. C. Merrill, Executive Secretary of the Federal Power Commission, addressed to Mr. D. L. Huntington, President, The Washington Water Power Company, Spokane, Washington, dated January 4, 1922, which document the defendant requests the record to show was removed by the Clerk of the court from the envelope containing correspondence between the company and the Federal Power Commission heretofore sealed by the Clerk and deposited in the records and files in this case in accordance with the terms of the stipulation heretofore made between the parties and part of the record in this case, and labeled as Defend-



ant's Identification No. 3. I don't believe it is probably necessary to read it into the record.

Mr. Keith: The offer is objected to upon the general ground. [184]

The Court: Objection sustained and exception allowed.

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Offer of Proof No. 87

Mr. Paine:

Comes now the defendant, The Washington Water Power Company, and as its Offer of Proof No. 87 offers to introduce in evidence a photostatic copy of a letter from O. C. Merrill, Executive Secretary, Federal Power Commission, addressed to Mr. D. L. Huntington, President, The Washington Water Power Company, Spokane, Washington, dated February 15, 1923, which letter we request the record to show was withdrawn from the envelope containing the correspondence between the company and the Federal Power Commission heretofore sealed by the Clerk and deposited in the records and files of this case in accordance with the terms of the stipulation heretofore made between the parties and part of the record of this case, labeled as Defendant's Identification No. 4.

Mr. Keith: The offer of proof is objected to upon the general grounds.

The Court: Objection sustained and exception allowed.

## Offer of Proof No. 88

Mr. Paine:

At this time the defendant, The Washington Water Power Company offers as its Offer of Proof No. 88, a document consisting of a photostatic copy of application for a permit to appropriate the public waters of the State of Washington and withdrawn from the envelope containing the correspondence between The Washington Water Power Company and the State Hydraulic Engineer heretofore sealed by the Clerk and deposited in the records and files of this case in accordance with the terms of the stipulation heretofore made between the parties and part of [185] the record in this case, and labeled as Defendant's Identification No. 5.

Mr. Keith: The offer is objected to on the general ground.

The Court: Objection sustained and exception allowed.

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## Offer of Proof No. 89

Mr. Paine:

At this time the defendant, The Washington Water Power Company offers as its Offer of Proof No. 89 a document consisting of a photostatic copy of application for a permit to construct a reservoir and to store for beneficial use the unappropriated waters of the State of Washington withdrawn from the envelope containing the correspondence between The Washington Water Power Company and the

State Hydraulic Engineer, and labeled as Defendant's Exhibit for Identification No. 6.

Mr. Keith: The offer is objected to upon the general ground.

The Court: Objection sustained and exception allowed.

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Offer of Proof No. 90

Mr. Paine:

At this time the defendant, The Washington Water Power Company, offers as its Offer of Proof No. 90, document consisting of a photostatic copy of a letter from Chas. J. Bartholet, Supervisor of Hydraulics of the State of Washington, dated July 17, 1934, which document the defendant requests the record to show was removed by the Clerk of the court from the envelope containing correspondence between The Washington Water Power Company and the State Hydraulic Engineer, and labeled as Defendant's Identification No. 7.

Mr. Keith: The offer is objected to upon the general [186] ground.

The Court: Objection sustained and exception allowed.

Mr. Paine: The purpose of the foregoing offers of proof, which were made at the time and in the manner suggested by Your Honor, is to show that the lands here involved had a value on December 9, 1939, for power site purposes by reason of their special adaptability for use as abutments for dams

in connection with the proposed Kettle Falls hydro-electric development and for the purpose of showing that such power site value, combined with the reasonable probability of a license being granted by the Federal Power Commission for the development of such hydro-electric development, had an effect upon the market value of the lands here involved, and to show that there was a reasonable probability at the time of the taking of these lands by the Government that these lands would have been devoted to power site purposes at that time or within the reasonably near future thereafter. It is nothing, of course, to object to, but as an explanation, so you will understand we presented our reasons to the Court. I believe that concludes our offers.

Mr. Keith: Now, I am certain that the record is clear on this, but I want to be doubly certain, and that is, that it was agreed between counsel on the two sides that it would not be necessary for the Government, in objecting to the various offers of proof made, to state specifically its objection on what has been referred to as the "general grounds." The general grounds were those argued before Your Honor prior to the making of the offers of proof.

The Court: The record may show that as far as the Court is concerned it considers the general ground the matters [187] raised in the argument of Mr. Stoutemyer and Mr. Keith and discussed for three days before the Court, and that the Court is fully cognizant of all of the arguments for and against the admission of this evidence and that it

would simply be a waste of everybody's time to have the repetition upon each offer of proof of the detailed statements of the attorneys.

Mr. Keith: That view is agreed to by The Washington Water Power Company, is it?

Mr. Paine: Yes. As I understand, there is no objection taken to the form of the offers of proof in regard to the witnesses sitting in the box and so forth.

The Court: I understand that was stipulated to yesterday.

Mr. Paine: Let the record show that the defendant rests.

(Defendant rests.)

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Mr. Keith: Let the record show that at this time the United States, the plaintiff-petitioner in the above entitled case, now moves the Court that it direct the jury to return a verdict in favor of the defendant, The Washington Water Power Company finding that the value of the property is the sum of \$7,950.35, and that the Court also direct the jury to return a verdict finding the value of the Clara (Lillian C.) Hummel tract to be the sum of \$241.35.

Mr. Herman: To which motion we object on behalf of The Washington Water Power Company and other defendants we represent.



The Court: The motion is granted and exception allowed on the part of The Washington Water Power Company and other defendants.

(The Clerk confers with the Court.) [188]

The Court: The Clerk calls my attention to this last paragraph of the stipulation concerning the Hummel tract: "That a judgment shall be entered herein directing the payment of Two hundred forty-one and 35/100 Dollars (\$241.35) to the defendant Lillian C. Hummel, a spinster, less unpaid taxes, if any." That being true, a verdict on the Hummel tract would not be necessary.

Mr. Keith: It seems to me it makes no substantial difference. [189]

The Court: Now, will the attorneys for the Government agree that in view of the fact that the attorneys for Ferry County and Stevens County were told last week that the length of the trial was not definitely determined and that they didn't need to come back until they had notice of it, and in view of the fact that the Court has already ruled in favor of the counties as against the Government on the question of taxes, that the Government will raise no objection to the fact that the Court instruct the jury to return verdicts in favor of the respective counties in the amount that the record shows, on the basis that no motion was made by the attorneys for a directed verdict, it being understood that by not raising that objection that the Government is not waiving any objection that they have to the fact that a directed verdict is ordered or that it may

not object to the fact that the Court rules that the amounts to be paid to the counties should be paid by the Government over and above the amount awarded to The Washington Water Power Company? All that I am asking is that you agree not to object on the ground that the attorneys are not here and not making the motion formally.

Mr. Keith: Yes, we will agree to that, Your Honor.

Mr. Stoutemyer: Yes.

The Court: Now, yesterday afternoon the county assessor of Stevens County was here and I asked him to get together with Mr. LaFramboise and you gentlemen. I understood that you had agreed upon the way the verdict to the counties, the amount, should be set up. Is that correct?

Mr. Stoutemyer: I have talked with one of them and I find this to be true: That the theory of the county auditors works out practically the same as our theory, though it is a [190] different theory. The amount amounted to practically the same.

(Discussion between counsel for the Government and the Court regarding form of verdict in favor of the counties omitted.)

The Court: I am holding that you have to pay the interest on the basis of the Washington statute which says a person who buys a piece of property before the first of February has to pay the taxes the next year. It is not on the question of the value of the property. It is just that the Washington statute holds that and the Supreme Court in the Alabama case said that we should follow the state

statute. If they followed about three-quarters of our state statute, it seems logical that we ought to follow the rest of the state statute, and I am holding that. Well, what is the way the verdict will read?

Mr. Stoutemyer: Well, under your ruling I assume the verdict to the county should be for the amount of the taxes, without interest, as they were at the date of the taking, and then when the judgment is prepared you will add six percent interest on that amount from the date of taking to the date of judgment.

The Court: All right.

Mr. Keith: There is one additional consideration in regard to these taxes that I think should be called to the Court's attention. I don't think it is controlling at all, but I talked to both Mr. Noble and Mr. Grinstead over long distance this morning. Of course, under the state statute interest on the taxes had not begun to run until a long time subsequent to the date of taking. They have authorized me to say to the Court that so far as both of them were concerned they did not feel [191] that the county had any claim for interest other than from June 1, 1940, that being the date upon which if the first half of the taxes were not paid, interest would run on the whole. I wanted to make that known to the Court because I feel that should be done. That will be taken care of in the judgment and not the verdict.

(Whereupon, a short recess was taken, after which the jury was brought in and instructed by the Court as follows:)

The Court: Members of the jury, as I told you yesterday, the disposition which was made of the testimony which the defendant offered and concerning which I ruled that it was not to be admitted, leaves nothing in this case as a matter of fact for the jury to decide. The parties have stipulated, as you remember, in the stipulation which I read to you at the outset of this trial that if I should rule that The Washington Water Power Company was not entitled to introduce testimony as to the value of this property for power site purposes, that it was agreed that the value of the property for agricultural and grazing purposes was \$7,950.35, and I explained to you when you first started your service as jurors the division of functions between the Court and the jury is that it is the function of the jury to decide questions of fact and the function of the Court to decide questions of law. The parties having stipulated as to the facts which would be the ultimate fact for you to decide in this case, the amount to be awarded to the defendant, The Washington Water Power Company, since they have stipulated as to that amount being \$7,950.35, it leaves no question of fact for you to decide and I have granted a motion of the [192] plaintiff that I direct the jury to return a verdict in favor of the defendant, The Washington Water Power Company, in the sum of \$7,950.35, and I now direct you to return that verdict and appoint Mr. Clausen as foreman of the jury to sign that verdict as between the plaintiff and the defendant The Washington



Water Power Company, and will allow an exception to The Washington Water Power Company for the ruling.

You will also remember that we had testimony from two of the counties, Stevens County and Ferry County. The testimony was as to the amount of taxes which were due upon this property taken and known as the 1940 taxes. After the testimony was submitted we had a legal argument here as to the right of the counties to collect the taxes and on the question as to who should pay those taxes, whether they should be paid by the Government or by the defendant, The Washington Water Power Company. That was purely a question of law, and upon that question I decided that the counties were entitled to collect for the taxes for the year 1940, and furthermore decided that the Government would be compelled to pay for those taxes, and there is no question as to the amount, or no dispute as to the amount, and since your function would be to determine the amount and they have agreed upon the amount, I am therefore instructing the jury to return a verdict in favor of the defendant Stevens County in the agreed sum of \$1,950.76, and for the defendant Ferry County in the agreed sum of \$1,033.20, and I will allow the plaintiff an exception to the ruling and to the direction of the verdict in those amounts in each instance, and I will ask Mr. Clausen to sign the three verdicts on behalf of the jury.

Mr. Keith: If Your Honor please, may we have



an exception [193] to the failure to give our requested instructions on the tax matter?

The Court: I didn't know that you had requested instructions, but if you have you may have an exception on the failure to give them, yes.

Mr. Keith: There are three which are given which are not in harmony with Your Honor's views.

The Court: All right. I will decline to give the instructions and allow you an exception. Having done that, I will also decline to give the instructions offered by the defendant, The Washington Water Power Company, and allow an exception, and the record may show in each instance that the Court has specifically ruled that there was no necessity for separate exceptions for the failure to give each separate instruction because the decision which I made upon the question of the admissibility of evidence, so far as The Washington Water Power Company is concerned, made it unnecessary for them to take separate exceptions. It would not make any difference what was in the instructions. I couldn't give the jury any instructions when ruling as I did, and the same exception with reference to the exceptions with reference to the counties. The Clerk will read the verdicts.

(Whereupon, the verdicts were read by the Clerk.)

The Court: The verdicts will be received and filed.

Mr. Herman: If Your Honor please, we have discussed something with Mr. Keith about a motion

for a new trial and the disposition of it and I move at this time that the Court withhold the making and entering of any judgment until after the motion for a new trial is disposed of. The motion for a new trial will [194] be made within the next two days. I ask the Court to withhold entering the judgment. [195]

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### REPORTER'S CERTIFICATE

State of Washington,  
County of Spokane—ss.

I, Geo. J. Stewart, do hereby certify:

That I am the Court Reporter who reported the proceedings had and testimony taken in the above entitled cause; that the above and foregoing Transcript of Evidence and Proceedings is a full, true, correct and complete transcription of the same.

GEO. J. STEWART

Court Reporter

[Endorsed]: Filed March 30, 1942. [196]

PLAINTIFF'S IDENTIFICATION "A"

The following is an extract from the minutes of a meeting of the Federal Power Commission held June 23, 1936:

ORDER DENYING APPLICATION  
FOR LICENSE

(Project No. 229)

It appearing to the Commission:

(1) That on July 26, 1922, a preliminary permit was issued to The Washington Water Power Company for three years, for the project known as project No. 229 at Kettle Falls on the Columbia River in Ferry and Stevens counties, Washington; and that on July 21, 1925, pursuant to said preliminary permit, an application was filed by The Washington Water Power Company for a license for the construction of said proposed project consisting of a dam, reservoir, power plant and appurtenant works;

(2) That said application for license was referred to the office of the Chief of Engineers of the War Department on July 25, 1925 for investigation and report, which report was deferred pending the applicant's completion of (a) required investigations of the feasibility of raising the dam and normal pool level of said proposed project about 40 feet so as to utilize the entire available head to the International boundary between Canada and the United States, and (b) further explora-

tions of the dam site and reports thereon by a geologist and board of consulting engineers; and which report was also deferred pending a study by the War Department of all phases of the relation of said proposed project to the comprehensive development of the said Columbia River;

(3) That investigations were undertaken under the direction of the Secretary of War and supervision of the Chief of Engineers pursuant to Section 1 of the River and Harbor Act, approved January 21, 1927, of the upper Columbia River, as authorized by Congress in accordance with House Document No. 308, Sixty-ninth Congress, First Session, dated April 13, 1926, and the Chief of Engineers of the War Department under letter dated March 29, 1932, submitted to the Secretary of War a report containing a general plan for the improvement of the Columbia River and minor tributaries, and proposed in said report a dam on Columbia River at the Grand Coulee site, designed to raise the water surface about 350 feet above low water to a pool elevation of 1,287.6 feet, thus backing water to a point near the International boundary and providing for the development of a large amount of electric power and for the irrigation of the so-called Columbia basin project by pumping;

(4) That by letters to the Commission, dated March 12, 1931, and March 27, 1931, the Commissioner of Reclamation recommended that the Commission dismiss all applications contemplating developments on the Columbia River between Grand

Coulee and the International boundary line as being an interference with the said proposed Columbia Basin project, and in order to safeguard the possibility of building a high dam at Grand Coulee as being conducive to the public interest ; [205]

(5) That by letter to the Commission, dated May 5, 1932, the Chief of Engineers of the War Department recommended to the Commission that the application of said The Washington Water Power Company be rejected on account of interference with the said proposed Columbia Basin project, and as not being in accordance with the requirements of Section 10(a) of the Federal Water Power Act, in that the development as proposed was not the best adapted to a comprehensive scheme of improvement, utilization for the purpose of navigation, and of other beneficial public uses of water power resources ;

(6) That in view of said report under date of March 29, 1932 from the Chief of Engineers of the War Department, and in view of said recommendations from the Chief of Engineers and the Commissioner of Reclamation, the Commission on February 16, 1933, ordered the applicant to show cause by May 19, 1933, why its application for said license should not be rejected ; that in response to said order the applicant submitted certain information and representations :

(7) That on August 30, 1933, the Commission, in an order authorizing the issuance of a preliminary permit to the Columbia Basin Commission for the



development of the Grand Coulee site on the Columbia River designated as project No. 1242, found that said development would conflict with project No. 229, but that said project No. 1242 was best adapted to a comprehensive scheme of improvement and utilization of the water resources of the region for navigation, water-power development, irrigation, flood control, and other beneficial public uses, and was desirable and justified in the public interest for the purpose of improving and developing the Columbia River for the use and benefit of interstate and foreign commerce.

(8) That on July 13, 1934, the Secretary of the Interior approved an award of contract for the construction of the Grand Coulee dam project as a Federal project, at the Grand Coulee site, located on the Columbia River, and on August 2, 1935, the Congress under Section 2 of the Rivers and Harbors Act of August 2, 1935 (Public No. 409, 74th Congress), authorized and adopted the Grand Coulee dam project, validated and ratified all contracts executed in connection therewith, and authorized the construction, operation, and maintenance of dams, structures, canals, and incidental works necessary to the project, and the making of all necessary contracts in connection therewith;

(9) That on April 21, 1936, the Commission adopted an order for a hearing on the said application and all matters pertinent thereto, to be held on May 25, 1936; that, after appropriate notice thereof, such hearing was held on May 25, 1936, at

which hearing the applicant was heard in support of its application, and others appearing were heard in protest and objection to the granting of the said application.

Now, therefore, the Commission having considered the application, the protests, the evidence and representations at the hearing, and all matters of record pertaining to the application including the reports and recommendations from the Chief of Engineers of the War Department and the Commissioner of Reclamation, finds: [206]

(1) That the development of the water resources of the Columbia River for public purposes has been undertaken at Grand Coulee site by the United States, and that the application for project No. 229 affects and is in conflict with such development;

(2) That the plans for the proposed project No. 229 are not the best adapted to a comprehensive plan for the improvement and utilization of the water resources of the region for irrigation, flood control, navigation, water-power development, and other beneficial public uses;

(3) That, in the light of the subsequent events and matters hereinabove enumerated, the applicant, by the information and representations submitted by it in response to the Commission's said order of February 16, 1933, and by its testimony at said hearing held on May 25, 1936, has failed to show good and sufficient cause why the said application should not be rejected;

(4) That the granting of a license for said

project No. 229 would not be in the public interest.

Therefore, it is ordered:

That the application of The Washington Water Power Company for license for project No. 229 be and the same is hereby denied.

L. M. F.

Acting Secretary [207]

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## DEFENDANT'S IDENTIFICATION "1"

Inclosure 9910 from Federal Power Commission

Federal Power Commission

Washington, D. C.

Preliminary Permit

Project No. 229—Washington

The Washington Water Power Company [208]

I, O. C. Merrill, Executive Secretary of the Federal Power Commission, do hereby certify that the following is a true and correct copy from the record of the proceedings of the Commission in my custody of that portion of the minutes of the thirty-fourth meeting of the Commission, held on the 23rd day of June, 1922, which refers to the application of the Washington Water Power Company, of Spokane, Washington (Project No. 229).

"In the matter of the application of the Washington Water Power Company, of Spokane, Washington (Project No. 229), for a preliminary permit and license for a power

project on the Columbia River, a navigable waterway of the United States, and on lands of the United States in Ferry and Stevens Counties, Washington, involving the construction of a dam and power house at Kettle Falls in the Columbia River: said company having submitted satisfactory evidence of its right to perform within said State of Washington the acts necessary for the purposes of such permit and of its ability to finance the preliminary work and the proposed project; notice of said application having been given and published as required by Section 4 of the Federal Water Power Act, full opportunity having been given for all interested parties to be heard and no application for said project or in conflict therewith having been filed by any State or municipality; and it appearing that said project can be developed into and adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water-power development and of other beneficial public uses; it was voted that preliminary permit be issued for a period of three (3) years, subject to the provisions of said Act, to the rules and regulations of the Commission pursuant thereto, and to the following special conditions:

“(1) The Permittee to provide in its plans for the construction by the United States at some future date of locks and appurtenant navigation facilities at the dam, the general dimen-

sions of such locks to be in accordance with instructions from the United States District Engineer at Seattle, Washington.

“(2) The Permittee so to design his project works as to leave free and open any existing portage at Kettle Falls.

“(3) License if issued to contain a provision to the effect that if and when the United States shall decide to provide navigation facilities at the Kettle Falls dam, the licensee shall convey to the United States such of its lands and its rights of way and such right of passage through its dam or other structures as may be required for navigation facilities constructed by the United States.”

Witness my hand and seal of the Federal Power Commission at Washington, D. C., this 14th day of July, 1922.

O. C. MERRILL

Executive Secretary. [209]

On motion of Mr. L. M. Davenport, seconded by Mr. Porter, it was—

Resolved, that the proper officers of this company be, and they hereby are, authorized to execute and deliver to the Federal Power Commission an acceptance of a Preliminary Permit of said Federal Power Commission for the Kettle Falls Project of this company, in the form and language submitted to this Committee, and that a copy of the Preliminary Permit, and



of such acceptance, be attached to the minutes of this meeting of the Executive Committee and shall be a part thereof.

The resolution was unanimously carried.

I hereby certify that the foregoing is a full, true and correct copy of a resolution adopted at a meeting of the Executive Committee of The Washington Water Power Company held at the office of the company, Spokane, Washington, on the 19th day of July, 1922, there being a quorum present.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of the Company this 21st day of July, 1922.

V. G. SHINKLE

Secretary of The Washington  
Water Power Company.

“Between the meetings of the Board of Trustees the Executive committee shall have all the powers and duties of the Board of Trustees, excepting the powers and duties conferred by these by-laws upon the Finance Committee.”

I hereby certify that the foregoing is a full, true and correct copy of a portion of Article 5 of the by-laws of The Washington Water Power Company, and that the same is now in full force and effect.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Company, this 21st day of July, 1922.

V. G. SHINKLE

Secretary of The Washington  
Water Power Company. [210]

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The Federal Power Commission

Preliminary Permit

Project No. 229—Washington

The Washington Water Power Company

Whereas, by Act of Congress, approved June 10, 1920 (41 Stat., 1063) designated therein as "The Federal Water Power Act" and hereinafter called "the Act," the Federal Power Commission, hereinafter called "the Commission," is authorized and empowered, inter alia, to issue preliminary permits for the purpose of enabling applicants for a license under the Act to secure the data and to perform the acts required of such applicants by Section 9 of the Act: and

Whereas, the Washington Water Power Company hereinafter called "the Permittee," a public utility corporation organized and existing under the laws of the State of Washington and having its office and principal place of business in the City of Spokane, in said State, is an applicant for a license under the Act, and, in order to maintain priority of application therefor while securing the data and performing the acts aforesaid and to comply with the

rules and regulations of the Commission with respect to applications for license, filed in due form with the Commission on the thirtieth day of June, 1921, an application for a preliminary permit for a proposed power project, designated as Project No. 229 on the records of the Commission, located in the vicinity of Marcus, in the Counties of Ferry and Stevens, State of Washington, and involving certain lands of the United States, all as hereinafter described; and

Whereas, the Permittee has submitted satisfactory evidence of its incorporation of its right to perform within said State of Washington the acts necessary for the purposes of this permit, and of its ability to finance the preliminary work and the proposed project; and

Whereas, notice of said application has been given and published by the Commission as required by Section 4 of the Act; full opportunity has been given all interested parties to be heard; and no application for said proposed [211] project, or in conflict therewith, has been filed by any State or municipality; and

Whereas, it appears that said proposed project, as hereinafter described can be developed into and adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water-power development and of other beneficial public uses; and that neither the permit nor the license applied for will interfere or be inconsistent with the purpose for which any reservation affected thereby was created or acquired; and

Whereas, the Permittee on the 19th day of July, 1922, pursuant to an authorization of its Executive Committee, hereto attached, accepted in writing the terms and conditions of this permit.

Now, Therefore, the Permittee is hereby granted a preliminary permit for the sole purpose of maintaining priority of application for a license under the terms of the Act while making examinations and surveys, preparing maps, plans, specifications, and estimates, and making financial arrangements; said permit being subject to all the terms and conditions of the Act, to the rules and regulations of the Commission pursuant thereto, which said rules and regulations are hereto attached and made a part hereof, and to the following express conditions, to wit:

Article 1. The priority granted hereunder shall be for a period of three (3) years from the date of issuance hereof, and for a proposed project described as follows:

A dam and power house at Kettle Falls in Columbia River, all as located and described by certain maps and data filed with and made a part of said application for preliminary permit.

Article 2. The Permittee shall on or before the first day of April, 1925, file with the Executive Secretary of the Commission at Washington, District of Columbia, or with such other officer or agent of the Commission, or at such place, as may be designated by the Commission, and in the manner prescribed by said rules and regulations, an application for a license for said proposed project and for the

use and occupancy of such lands or other property of the United States as may be required in the construction, maintenance or operation thereof. [212]

Article 3. The Permittee shall make such engineering and other investigations, secure such data and perform such acts as will enable it to submit to the Commission on or before the date named in Article 2 hereof, such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project; and shall supply for the use of the Commission correct copies of engineering reports and of any other information secured in connection with such investigations when and as they are submitted to the Permittee. In carrying out the requirements of this article, the Permittee shall—

A. Install as soon as practicable and thereafter maintain a standard stream-gage and stream-gaging station at such point as may be necessary to determine the stage and available flow of Columbia River shall provide for periodic readings of such gage and for the adequate rating of the said stream-gaging station. The exact location, design and time of installation of gages and stations, the ratings of said stations, and the determination of the flow thereat, shall be made in cooperation with the United States Geological Survey and under the supervision of its District Engineer having charge of stream-gaging operations in the region of said project; and the Permittee shall



reimburse the said United States Geological Survey for expenses incurred in such cooperation and supervision, or for such part thereof as said District Engineer may deem equitable in the circumstances. The Permittee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, shall make return of such records at the time of filing application for license as aforesaid, and at such other times as the Commission may require, and in such form as the Commission may prescribe.

B. Sink such test pits or make such borings or other foundation explorations as will make available sufficient information relating to character of foundations for the said dam and power house to permit of the designing of such dam and power house in [213] accordance with good engineering practice and the checking of their safety, adequacy, and desirability in the development of the resources involved.

C. Provide in its plans for the construction by the United States at some future date of locks and appurtenant navigation facilities at the dam, the general dimensions of such lock to be in accordance with instructions from the United States District Engineer at Seattle, Washington.

D. So design his project works as to leave free and open any existing portage at Kettle Falls.

Article 4. License will be issued for said proposed project only if it appears that the scheme of development proposed in said application for license will be best adapted to the improvement and utilization of the site for purposes of navigation, of water-power development and of other beneficial public uses. In reaching decision thereon, the Commission will consider:

A. Whether the maps, plans, and specifications are such:

(1) That full, practicable utilization will be made of the water, storage possibilities, and the head at the site to be developed.

(2) That the structures will be safe and in accordance with good engineering practice.

(3) That all unnecessary energy losses, whether in hydraulic works or in mechanical or electrical equipment, will be avoided.

B. Whether in relation to existing or probable future projects upon the same or adjacent streams, the fullest practicable utilization of the water, storage possibilities, and head available will be made possible.

C. Whether said project will be in general accord with the most beneficial utilization of the water for navigation, water power, irrigation, or other beneficial public uses, and for aiding flood control, reclamation, and similar developments. [214]

D. Whether proper provision is made for present or future electrical interconnection with

other projects or systems in order to take advantage of diversity of stream flow and of power demands.

E. Whether the use to which the power will be devoted is, in general, in accord with the needs of the community and of the public welfare.

F. Whether the applicant is financially able to carry out the development.

Article 5. The priority granted hereunder may be lost if the Permittee fails to fulfill the requirements of this permit, if the permit is cancelled by order of the Commission, or if in the course of consideration by the Commission of said application for license, the Permittee shall not on or before the expiration of the period hereof, or such later date as may be fixed by the Commission:

A. File data required by the Commission in addition to that contained in or furnished with said application; or

B. Present satisfactory evidence of ability to carry out the plan as set forth in said application, or as required to be modified by the Commission; or

C. Accept the conditions of the proposed license; or

D. Modify its plans as may be required by the Commission if the project adopted as disclosed in said plans is not such as in the judgment of the Commission, based upon the con-

siderations set forth in Article 4 hereof, will be best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water-power development, and of other beneficial public uses.

Article 6. The Permittee shall keep accurate and dependable records of all expenditures made for the purposes authorize herein; and in the event that a license is issued for said proposed project covered in whole or in part by this permit, any and all items properly includible in the actual legitimate [215] cost of said project, representing expenditures made before the date of the license, shall be supported by proper vouchers or other records, the same as would have been required of a licensee had no preliminary permit been issued; and any such vouchers or records, or certified copies thereof, in support of any item properly includible in the cost of said project shall become a part of the records of said project and shall be kept and retained by the Permittee in the manner required by the Commission. A report of all such expenditures, in such detail as the Commission may require, shall be submitted promptly when called for by the Commission.

Article 7. If license is issued for said proposed project it shall be subject to the rules and regulations of the Commission in force at the date of issuance hereof; shall, subject to the provisions of Sections 13, 16, and 26 of the Act and of the last proviso of Section 14 of the Act, be for a period

of fifty (50) years, and shall provide that the licensee shall convey to the United States such of its lands and its rights of way and such right of passage through its dam or other structures as may be required for navigation facilities constructed by the United States.

Article 8. This permit confers no authority upon the Permittee to occupy or use lands or other property of the United States for purposes of construction unless specific permission is given by the Commission for such occupancy or use; and neither the granting of such authority nor the performance of construction work whether with or without such authority shall be deemed to have created any equities or to have established any rights with respect to issuance of license, beyond what would have been created or established had such authority not been given or such work not been performed.

Article 9. This permit is not transferable and may be cancelled by order of the Commission upon failure of the Permittee in good faith to begin or diligently to prosecute the investigations contemplated herein, or to comply with any other conditions hereof.

In Witness Whereof, the Federal Power Commission has caused its name and seal to be hereto signed and affixed by O. C. Merrill, its Executive Secretary, this twenty-sixth day of July, 1922.

FEDERAL POWER COMMISSION

By O. C. MERRILL

Executive Secretary [216]



In testimony of acceptance of all the terms and conditions of the Federal Water Power Act of June 10, 1920, and of the further conditions imposed in the foregoing Preliminary Permit, the Permittee, this 21st day of July, 1922, has caused its name and corporate seal to be hereto signed and affixed by D. L. Huntington, its President, pursuant to a resolution of its Executive Committee, passed on the 19th day of July, 1922, a certified copy of the record thereof being hereto attached.

THE WASHINGTON WATER  
POWER COMPANY,

By D. L. HUNTINGTON  
President.

Attest:

V. G. SHINKLE  
Secretary. [217]

Federal Power Commission  
Rules and Regulations

As Amended by Order No. 11 of June 6, 1921

Governing the Administration of  
the Federal Water Power Act

With Copies of the Act, of Amendment Thereto,  
And of Orders Nos. 1 to 11, Inclusive

First Revised Issue

Effective June 6, 1921

Washington  
Government Printing Office  
1921 [218]

DEFENDANT'S IDENTIFICATION "3"

Federal Power Commission  
Washington

Secretary of War, Chairman

Secretary of the Interior

Secretary of Agriculture

O. C. Merrill, Executive Secretary

Address Reply to

Executive Secretary

and Refer to

E

January 4, 1922

Projects, Wash. (#229)

Washington Water Power Co.

Mr. D. L. Huntington,

President, The Washington Water Power Co.,  
Spokane, Washington.

Dear Sir:

Replying to your letter of December 26, the Commission should be able to act on an application for a license for your Kettle Falls project without much delay, assuming that the plans have been prepared in a satisfactory manner. The project was outlined pretty thoroughly in your application for a preliminary permit so that this office has a fairly clear understanding of what you are proposing to do and how you propose to do it. The application will not have to be advertised. A supplemental report from Col. Schulz will be desired, upon receipt of

which a license will be drafted and submitted to the Commission at its first meeting thereafter. The Commission meets at least once a month and the question of drafting a license where no complications exist, as appears to be the case with this project, is a matter of only a few days. To save time I suggest that you file two of the three copies of your application for a license direct with Col. Schulz, with the request that he submit his report on the application as early as practicable. Inasmuch as Col. Schulz has already reported on the application for a preliminary permit, only a supplemental report covering features not heretofore discussed need be prepared. I believe that the necessary procedure from the time the application is filed until the license is granted can be carried out in one to two months, depending on circumstances.

Very truly yours,

O. C. MERRILL

Executive Secretary.

Noted VHG

Received

Jan 8 1923

Answered Jany 8-23

By dlh [219]

DEFENDANT'S IDENTIFICATION "4"

Federal Power Commission  
Washington

Secretary of War, Chairman

Secretary of the Interior

Secretary of Agriculture

O. C. Merrill, Executive Secretary

Address Reply to

Executive Secretary

and Refer to

E

Projects, Washington, (#229)

Washington Water Power Co.

February 15, 1923.

Mr. D. L. Huntington,

President, The Washington Water Power Co.,

Spokane, Washington.

Dear Sir:

Replying to your letter of February 10 you are informed that you are correct in assuming that the Commission will issue a license for your project prior to your obtaining title or flowage rights over lands to be affected by the proposed development.

In regard to the matter of obtaining the right to occupy or overflow Indian lands you are informed that this Commission can grant such authority for tribal Indian lands. Authority to use allotted Indian lands must be obtained from the Commissioner of Indian Affairs, Department of the Interior, ex-



cept that those allotted Indian lands owned by Indians possessing a certificate of competency may be procured or occupied by negotiations direct with the Indian as is the case with ordinary private property.

I am pleased to hear of the progress that you are making with your plans for developing Kettle Falls.

Very truly yours,

O. C. MERRILL

Executive Secretary

#52 Deft Id "4"

Received Feb 21 1923

Answered ..... By ..... [220]

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### DEFENDANT'S IDENTIFICATION "5"

Received Jan. 25 1922 Division of Hydraulics

Duplicate

Form 10

\*Permit No.....

Application for a Permit to Appropriate the Public  
Waters of the State of Washington

I, Washington Water Power Company (Cancelled 3/3/37 A. A. L.) of Spokane, County of Spokane, State of Washington, do hereby make application

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\* When storage works are contemplated a storage permit must be filed in addition to the above. These forms can be secured, together with instructions, by addressing the State Hydraulic Engineer, Olympia, Washington. [221]

for a permit to appropriate the following described public waters of the State of Washington subject to existing rights:

If the applicant is a corporation, give date and place of incorporation—March 13, 1899—Washington.

1. The source of the proposed appropriation is Columbia River tributary of.....

2. The amount of water which the applicant intends to apply to beneficial use is 50000 cubic feet per second.

3. The use to which the water is to be applied is Power Development for Mining, Manufacturing, Domestic, Railway, Municipal Waterworks Pumping, Industrial, Irrigation Pumping, etc.

4. Time during which water will be required each year—Continuously—Dependent on Requirements of Company customers.

5. The approximate point of diversion is located.—Sec. 2 and Sec. 11, Twp. 36 N, R. 37 E. W. M. being within the ..... of Sec. ...., Tp. .... R. .... W.M., in the counties of Ferry and Stevens.

6. The Minor channel for headrace, to be ..... miles in length, terminating in the ..... of Sec. .... Tp. ...., R. .... W.M., the proposed location being shown throughout on the accompanying map.

7. The name of the ditch, canal or other works is Kettle Falls Power Project.

8. Estimated cost of development necessary to fully utilize the appropriation herein asked for Preliminary cost estimate Fifteen to Twenty Million Dollars.

## Description of Works.

## Diversion Works—

9. (a) Height of diversion dam ..... feet;  
length on top ..... feet; length at bottom ..... feet;  
material to be used and character of construction .....

(b) description of headgate—

## Canal System—

10. (a) Give approximate dimensions at each point of canal where materially changed in size, stating miles from headgate. At headgate: Width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

(b) At ..... miles from headgate; Width on top (at water line) ..... feet; width on bottom ..... feet; depth of water ..... feet; grade ..... feet; depth of water ..... feet; grade ..... feet fall per one thousand feet.

Fill in the Following Information Where the Water Is Used for:

## Irrigation—

11. The land to be irrigated has a total area of ..... acres, described as follows: .....

## Duty of Water—

Character of soil: Depth ..... sandy ..... volcanic ash ..... loam ..... clay ..... etc. ....; Annual precipitation ..... inches; precipitation during growing season ..... inches; Depth of irrigation water required..... [222]

Power, Mining, Manufacturing, or Transportation  
Purposes—

13. (a) Total amount of power to be developed  
—Primary & Secondary—Approximately 300,000  
H.P.

(b) Total fall to be utilized 75 feet.

(c) The nature of the works by means of which  
the power is to be developed—Necessary dams,  
headrace and power house equipment to be installed  
for this purpose.

(d) Such works to be located in ..... of Sec. 2  
& 11 Tp. 36N, R. 37, E. W. M.

(e) To what stream is the water to be returned  
—Columbia River.

(f) Locate point of return—Lot 2 Sec. 11 Tp  
36N R. 37 E. W. M.

(g) The use to which power is to be applied is  
(same as 3). Remarks—Please note application for  
preliminary permit has been made to Federal  
Power Commission under existing Federal Law.

Exhibit H attached.

Sheet #1 & 2 Map of Kettle Falls project show-  
ing location of project works and project boundary  
enclosing reservoir area.

Municipal Supply—

14. To supply the city of ..... County, having  
a present population of ..... and an estimated  
population of ..... in 19.....

15. Estimated present requirement .....

16. Estimated future requirement .....

17. Construction work will begin on or before .....

18. Construction work will be completed on or before .....

Duplicate maps of the proposed ditch or other works, prepared in accordance with the rules of the State Hydraulic Engineer accompany this application.

WASHINGTON WATER  
POWER COMPANY

By D. L. HUNTINGTON

President [223]

Signed in the presence of us as witnesses:

(1) M. W. Birkett, c/o W. W. P. Co., Spokane, Washington.

(2) V. H. Greisser, c/o W. W. P. Co., Spokane, Washington.

Remarks:.....

State of Washington,  
County of Thurston—ss.

This is to certify that I have examined the foregoing application (Received ..... ) together with the accompanying maps and data, and return the same ..... for correction or completion, as follows: .....

In order to retain its priority, this application must be returned to the State Hydraulic Engineer, with corrections, on or before ....., 19....

Witness my hand this ..... day of ..... 19....

.....  
State Hydraulic Engineer. [224]



DEFENDANT'S IDENTIFICATION "6"

Received Jan. 25, 1922.

Division of Hydraulics.

Duplicate

Reservoir Permit No.....

Application for a Permit to Construct a Reservoir  
and to Store for Beneficial Use the Unappropri-  
ated Waters of the State of Washington

I, Washington Water Power Company (Cancelled  
3/3/37 A. A. L.) of Spokane, County of Spokane,  
State of Washington, do hereby make application  
for a permit to construct the following described  
reservoir and to store the unappropriated waters  
of the State of Washington subject to existing  
rights.

If the applicant is a corporation, give date and  
place of incorporation—March 13, 1889—Washing-  
ton.

1. The name of the proposed reservoir is Kettle  
Falls Power Project.

2. The name of the stream from which the reser-  
voir to be filled and the appropriation made is Co-  
lumbia River, tributary of .....

3. The amount of water to be stored is approxi-  
mately 60,000 acre-feet between max. level and crest  
of dam.

4. The use to be made of the impounded water  
is Power and as more fully set forth in Appropria-  
tion Permit No. ....

5. The location of the proposed reservoir will  
be in Sec.—See Exhibit "H".

(a) State whether situated in channel of running stream and give character of material at outlet—Columbia River channel upstream from dam.

(b) If not in channel of running stream, state how it is to be filled. If through a feed canal, give name and dimensions .....

6. The impounding dam will be located in .....  
 Sec. 2 & 11, Tp. 36N, R. 37 E. W. M. It will be  
 Max. 75 feet in height, having a length on top of  
 1102 feet; length on bottom 1102 feet; [225] width  
 on top ..... feet; slope of front of water side  
 .....; slope on back .....; height of dam above  
 water line when full ..... feet.

7. The construction of dam, the material of which it is to be built, and method of protection from waves are as follows: Concrete.

8. The location of waste way with dimensions are as follows: Sec. 11, Twp. 36N, R. 37 E. W. M. Approx. 850' spillway.

9. The location of outlet from the proposed reservoir, with character of construction and dimensions, are as follows: .....

10. The area submerged by the proposed reservoir, when full, will be 5,000 acres, with a maximum depth of water of ..... feet, and approximate mean depth of water ..... feet.

11. The estimated cost of the proposed work is—  
 See Permit No. ....

12. Construction work will begin on or before .....

13. Construction work will be completed on or before .....

Duplicate maps of the proposed reservoir and storage works, prepared in accordance with the rules of the State Hydraulic Engineer accompany this application.

WASHINGTON WATER  
POWER COMPANY  
By D. L. HUNTINGTON  
President

Signed in the presence of us as witnesses:

M. W. Birkett, c/o W. W. P. Co., Spokane,  
Washington.

V. H. Greisser, c/o W. W. P. Co., Spokane,  
Washington. [226]

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DEFENDANT'S IDENTIFICATION "7"

State of Washington  
Department of Conservation and Development  
Division of Hydraulics  
Olympia

E. F. Banker, Director

J. B. Fink, Assistant Director

C. J. Bartholet,

Supervisor of Hydraulics

July 17th, 1934.

Washington Water Power Company

Spokane, Washington

Attention: Benj. J. Lindsay, Asst. Right of Way  
Agent

Gentlemen:

Further replying to your letter of June 22nd:

Please be advised that permits to appropriate and store waters of the Columbia River were issued to-

day to the Columbia Basin Commission for the development of the project at Grand Coulee.

However, applications 708 and 709 of the Washington Water Power Company for permits to appropriate and store water at Kettle Falls will be kept in good standing until steps are taken to construct the dam at Grand Coulee to the full height, or an elevation of 1300 ft. approximately, U. S. datum.

You may also be interested in learning that steps have been taken by the Secretary of the Interior to withdraw waters of the Columbia River from appropriation, as provided for in Chap. 88, Laws of 1905 and Sec. 27, Chap. 117, Laws of 1917.

Yours very truly,

CHAS. J. BARTHOLET

Supervisor of Hydraulics

CJB:GH [227]

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[Title of District Court and Cause.]

PETITIONER'S PROPOSED INSTRUCTIONS  
TO THE JURY

Instruction No. 1

You are instructed, that the tax liens on lands taken by the United States in eminent domain proceedings do not increase the value of the land which the plaintiff is required to pay therefor.

## Instruction No. 2

You are instructed, that the total award or awards which should be made against the United States for the lands condemned in this action (other than Tract No. 2, the Hummel tract) should be the value of the land, that is, the sum of \$7,950.35.

## Instruction No. 3

You are instructed, that the amount of the tax liens awarded to the counties and required to be paid to them should be deducted from the stipulated value of \$7,950.35, in arriving at the amount which should be awarded to the defendant Washington Water Power Company for its interest in the lands condemned.

[Endorsed]: Filed Sep 23 1941. A. A. LaFramboise, Clerk. [228]

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[Title of District Court and Cause.]

PROPOSED INSTRUCTIONS SUBMITTED  
BY DEFENDANT THE WASHINGTON  
WATER POWER COMPANY

## Proposed Instruction No. 1

You are instructed that just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his land, but is to be arrived at upon just consideration of all the uses for which it is suitable.



The highest and most profitable use for which the property is adapted and needed, or likely to be needed in the reasonably near future, is to be considered, not necessarily as the measure of value, but to the full extent that the prospect for the demand of such use affects the market value while the property is privately held.

The fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect the market value. To the extent that probable demand by prospective purchasers, or condemnor, affects market value, it is to be taken into account. Physical adaptability alone cannot be deemed to affect market value. There must be a reasonable possibility that the owner could use his tract, together with the other lands necessary for hydro-electric developments, or that another could acquire all lands or easements necessary for that use.

You are instructed that the market value of property may be deemed to be the sum which, considering all the circumstances, could have been obtained for it; that is, the amount that in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy.

In making that estimate you should take into account all considerations that fairly might be brought forward and reasonably be given substantial weight

in such bargaining. The determination is to be [229] made in the light of all facts affecting the market value that are shown by the evidence, taken in connection with those of such general notoriety as not to require proof. Elements affecting value that depend upon events in combinations of occurrences which, while in the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration.

### Proposed Instruction No. 2

You are instructed that the defendants in the proof of the market value of their land, are not restricted to evidence of its value for development within itself.

You are instructed that under the laws of the State of Washington, public service corporations organized for the purpose of, and authorized by law so to do, may acquire property necessary for the public use in connection with the development of hydro-electric plants by the exercise of eminent domain.

You are further instructed that the fact that it might be necessary for a condemnor to exercise the right of eminent domain in order to acquire property for use in connection with the development of a hydro-electric plant does not negative consideration of the availability of the land here involved, for use in connection with a hydro-electric plant. Elements affecting value that depend upon events, or combinations of occurrences, which are fairly shown to be reasonably probable, may be taken into

consideration in determining what constitutes just compensation for the property involved in this proceeding.

The enhanced market value, if any, of the defendant's land, due to its adaptability for valuable uses in conjunction with other properties, may be considered if the practicability of the combination of the necessary properties upon which such availability depends, was at the time of the condemnation so great as to have probably affected the public mind, and therefore to have enhanced the price which the purchaser might be expected [230] to give.

The fact that the most profitable use could be made only in connection with other land is not conclusive against its being taken into account, if the union of properties necessary is so practicable that the possibility would affect the market price. What the owner is entitled to is the value of the property taken, and that means what it fairly may be believed that a purchaser in fair market conditions would have given for it in fact.

### Proposed Instruction No. 3

In this case it is stipulated that the defendant's lands could not by themselves alone be used for the purpose of developing power, but that it would be necessary to combine with them the bed of the Columbia River, the lands above the dam site which would be flooded, and the right to use the flow of the stream.

This fact alone does not mean, however, that the defendant's lands have no value for power site purposes. The correct test is whether from all the evidence it appears that the union of all these necessary properties was so reasonably practical that the possibility thereof had affected the market price of defendant's land at the time of taking.

In this connection I instruct you that in considering what is just compensation you should determine the award for the property free from the effect that any of the actions of the condemnor, the United States of America, of which there is any evidence in this case, may have had on the value of the property at the time of taking.

#### Proposed Instruction No. 4

I instruct you that the date of taking in this case is December 9, 1939, and you must determine the value of the property as of that date; that is, its fair market value on that date. However, in this regard, I [231] instruct you that you may not consider an increased value due to the fact that the United States had by that date definitely committed itself to build the Grand Coulee project, and that this land was a necessary part of the project; and on the other hand, you should not consider any diminution in market value on that date due to any action on the part of the United States if said action reduced the value of said lands.

In other words, you must determine the value of the lands appropriated by the United States Gov-

ernment without giving any consideration whatever to the effect the action of the condemnor, the United States Government, of which there is any evidence in this case, may have had upon the value of the property at the time of taking.

### Proposed Instruction No. 5

I instruct you that in determining the fair market value of the property you are entitled to take into consideration all facts admitted in evidence which an informed seller, willing but not required to sell, and an informed buyer, willing but not required to buy, would take into consideration. Specifically if you find from the evidence that the property here in question was adapted for power site purposes, and that the property either could be used for the development of water power or sold at a greater price than it would otherwise bring because of a reasonable chance that it could be used for power site purposes, then you have a right to consider all the facts admitted in evidence which would affect such value. You may consider the investment the defendant has in the property, the price at which the property has sold in the past, taking into consideration the time which has elapsed since said sales, the likelihood that the property has increased or decreased in value during the interim, the sales of similar property, if any, the fact that the property is located on a navigable river, and that the defendant, or any private owner has no inherent right to own the waters of the river, or to



erect structures in its bed, but must secure permission from the government to do so, together [232] with any or all other matters or things which the evidence in this case indicates would increase or decrease the value of the property at the time of taking.

You may also consider the opinions of the witnesses who, because of their experience, were permitted to testify as experts. Taking into consideration all these elements, you are to determine a sum in money that in your opinion represents the fair market value of the property.

In this connection, however, I caution you that in determining the value of the property at the time of taking, you must fix such value at what would be the market value at that time, free from the effects of any action on the part of the condemnor, the United States Government, of which there is any evidence in this case, which might increase or decrease the value of the property.

#### Proposed Instruction No. 6

I instruct you that the United States has the right to require the properties here involved by eminent domain. It is immaterial therefore, whether the United States is acquiring them in aid of navigation or not. The defendant is entitled to receive the same amount of damages whether the lands are taken for a park, a postoffice site, or as the bottom of a reservoir for the Grand Coulee Dam.

## Proposed Instruction No. 7

You are further instructed that sales of land in the neighborhood and the prices received therefor, are to be disregarded by you in considering the market value of defendant's land involved in this proceeding, unless, when considered in the light of the testimony you are satisfied that there is real similarity between the land so sold and the land which is the subject of litigation in the case at bar.

Filed: Sep. 22, 1941. A. A. LaFramboise, Clerk.  
[233]

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[Title of District Court and Cause.]

We, the Jury in the Above Entitled Cause, find for the defendant Ferry County, in the sum of \$1033.20.

ARTHUR J. CLAUSEN  
Foreman.

[Endorsed]: Filed Sep. 23, 1941. A. A. LaFramboise, Clerk.

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[Title of District Court and Cause.]

We, the Jury in the Above Entitled Cause, find for the defendant Stevens County in the sum of \$1950.76.

ARTHUR J. CLAUSEN  
Foreman.

[Endorsed]: Filed Sep. 23, 1941. A. A. LaFramboise, Clerk. [234]

[Title of District Court and Cause.]

We, the Jury in the Above Entitled Cause, find for the defendant Washington Water Power Company, in the sum of \$7950.35.

ARTHUR J. CLAUSEN

Foreman.

[Endorsed]: Filed Sep. 23, 1941. A. A. LaFramboise, Clerk. [235]

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[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the petitioner United States of America and moves the Court for a new trial for the reasons hereinafter set forth and upon the following grounds:

(1) That the verdict of the jury in favor of Stevens County, Wash., in the sum of \$1950.76 and the verdict of the jury in favor of Ferry County, Washington in the sum of \$1033.20 are contrary to law.

(2) Error in law occurring at the trial and excepted to at the time by the petitioner.

LYLE KEITH

United States Attorney.

B. E. STOUTEMYER

Reclamation.

District Counsel, Bureau of

Service accepted and copy received this 12th day of January, 1942.

POST, RUSSELL, DAVIS & PAINE

Attorneys for Defendants,

Washington Water Power Company,  
City Bank Farmers Trust Company,  
and Ralph E. Morton, Trustee.

[Endorsed]: Filed Jan. 13, 1942. A. A. LaFramboise, Clerk. [236]

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[Title of District Court and Cause.]

ORDER DENYING PETITIONER'S MOTION  
FOR NEW TRIAL

This matter came on before the Court on this 23rd day of January, 1942, upon the motion of the petitioner, the United States of America, for a new trial, the petitioner appearing by Lyle Keith, United States District Attorney, and B. E. Stoutemyer, District Counsel, Bureau of Reclamation, and the defendants, The Washington Water Power Company, a corporation, City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as trustee, appearing by Post, Russell, Davis and Paine, and H. E. T. Herman; defendant, Stevens County, appearing by F. Leo Grinstead; and defendant, Ferry County, appearing by Osee W. Noble; the matter having been submitted to the Court for decision and the Court having been fully advised in the premises, now therefore,

It Is Hereby Ordered that said petitioner's motion for new trial be and the same hereby is denied, to which the petitioner, excepts and exception is allowed.

Done in Open Court this 23rd day of January, 1942.

L. B. SCHWELLENBACH  
United States District Judge.

Approved as to Form:

LYLE KEITH  
United States Attorney.

F. LEO GRINSTEAD  
Prosecuting Attorney,  
Stevens County.

OOSEE W. NOBLE  
Prosecuting Attorney,  
Ferry County.

Presented By:

POST, RUSSELL, DAVIS & PAINE  
M. E. T. HERMAN

Attorneys for Defendants.

O.K. as to form,

ALAN G. PAINE  
H. E. T. HERMAN.

[Endorsed]: Filed Oct. 23, 1941. A. A. LaFramboise, Clerk. [237]



[Title of District Court and Cause.]

### JUDGMENT

This cause having come on for trial on the 15th day of September, 1941, and the issues arising upon the petition of the plaintiff and the declaration of taking, other than those disposed of by that certain stipulation entered into between the United States of America and the Washington Water Power Company, filed in this court on August 19, 1941, having been duly tried before the Court and a jury, and the said jury having returned their verdict herein, in and by the terms of which the said jury made the following award to the several defendants herein, to-wit:

To the defendant Washington Water Power Company, a corporation, the sum of.....	\$7950.35
To the defendant Stevens County, Washington, the sum of.....	\$1970.76
To the defendant Ferry County, Washington, the sum of.....	\$1033.20

And it appearing to the Court from the records and files in the above entitled action, that under date of December 9, 1939, a declaration of taking under the provisions of (a) the Act of Congress of August 30, 1935 (49 Stat., 1039), (b) the Act of Congress of June 17, 1902 (32 Stat., 388) and all acts amendatory thereof and supplementary thereto, commonly known as the Reclamation Law, and (c) the Act of Congress of February 26, 1931 (46 Stat., 1421), Chapter 307, signed by the authority empowered by law to acquire the lands described in

the petition, was filed in the above entitled action, and that with the said declaration of taking there was deposited into the registry of the Court, to the use and for the benefit of the persons thereto entitled, on the 9th day of December, 1939, the sum of \$8,191.70, as the estimated just compensation for the following described premises, to-wit: [238]

Tract No. 1

(The Washington Water Power Company  
tract)

The following described property situate in the County of Stevens, State of Washington, to-wit:

Lot one (1) in the northeast quarter ( $NE\frac{1}{4}$ ), Lot two (2) in the northeast quarter ( $NE\frac{1}{4}$ ), and lot three (3) in the southeast quarter ( $SE\frac{1}{4}$ ) of Section eleven (11), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian (patented under date of July 22, 1896 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus) being islands in the Columbia River, containing 88.85 acres, more or less.

Also, Lot one (1), the north half of Lot two ( $N\frac{1}{2}$  of Lot 2), the north half of the southeast quarter of the northwest quarter ( $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ ) and the northeast quarter of the northwest quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ) of Section twelve (12), Township thirty-six (36) North, Range

thirty-seven (37) East, Willamette Meridian, containing 93.00 acres, more or less.

Also, a tract of land containing 21.14 acres, more or less, being that portion of Lot one (1) and the southwest quarter of the northeast quarter ( $SW\frac{1}{4}NE\frac{1}{4}$ ) of section fourteen (14), and that portion of Lots one (1) and two (2) and the southeast quarter of the southeast quarter ( $SE\frac{1}{4}SE\frac{1}{4}$ ) of Section eleven (11) (patented under date of June 8, 1891 to Joseph M. Cataldo as the Superior General of the Rocky Mountain Missions of the Society of Jesus), all in Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, lying between the east line of the Columbia River and a line described as follows: Beginning at a point on the west line of the southwest quarter of the northeast quarter ( $SW\frac{1}{4}NE\frac{1}{4}$ ) of said Section fourteen (14), which point bears North  $02^{\circ}54'10''$  west 1070.85 feet and south  $87^{\circ}57'49''$  West 2630.26 feet from the quarter section corner on east line of said Section Fourteen (14); running thence North  $05^{\circ}35'00''$  East 207.92 feet; thence North  $36^{\circ}13'00''$  East 476.48 feet; thence North  $07^{\circ}55'20''$  East 517.39 feet; thence North  $00^{\circ}01'00''$  East 296.85 feet; thence North  $11^{\circ}31'40''$  East 220.19 feet; to a point on the north line of said Section fourteen (14), which point bears South  $87^{\circ}59'45''$  West 2141.46 feet from the northeast section corner of said sec-

tion fourteen (14); thence North  $11^{\circ}31'40''$  East 184.15 feet; thence north  $27^{\circ}35'10''$  east 241.46 feet; thence North  $44^{\circ}34'50''$  East 285.64 feet; thence North  $11^{\circ}38'10''$  West 583.14 feet; thence south  $77^{\circ}21'40''$  East 335.03 feet; thence North  $52^{\circ}09'20''$  east 291.35 feet; thence North  $60^{\circ}55'10''$  East 338.99 feet; thence North  $37^{\circ}37'10''$  East 303.06 feet; thence North  $23^{\circ}43'20''$  East 456.88 feet; thence South  $67^{\circ}15'00''$  east 333.86 feet; thence South  $47^{\circ}22'10''$

[239]

East 305.19 feet; thence south  $38^{\circ}01'00''$  East 160.95 feet to a point on the east line of said Section eleven (11), which point bears North  $02^{\circ}01'13''$  West 1561.06 feet from the southeast section corner of said Section eleven (11); excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway).

Also, Lot two (2) of Section fourteen (14), Township thirty-six (36) north, range thirty-seven (37) east, Willamette Meridian, excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway), containing 13.80 acres, more or less.

Also, a tract of land containing 79.43 acres, more or less, being all of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of sec-

tion twelve (12), and a portion of the southwest quarter of the southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$ ) of section twelve (12) and the Northwest quarter of the Northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), all in Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the north line of the southwest quarter of the southwest quarter ( $SW\frac{1}{4}SW\frac{1}{4}$ ) of said Section twelve (12), which point bears north  $02^{\circ}01'13''$  West 1320.00 feet and North  $85^{\circ}30'05''$  East 108.45 feet from the southwest corner of said Section twelve (12); running thence north  $85^{\circ}30'05''$  east 2417.99 feet to the northeast corner of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of said section twelve (12); thence South  $01^{\circ}37'15''$  East 1313.28 feet to the quarter section corner on the south line of said Section twelve (12); thence south  $85^{\circ}20'21''$  west 1262.15 feet along the south line of said section twelve (12) to the southwest corner of the southeast quarter of the southwest quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of said section twelve (12); thence south  $03^{\circ}10'19''$  east 1185.64 feet along the east line of the northwest quarter of the northwest quarter ( $NW\frac{1}{4}NW\frac{1}{4}$ ) of said Section thirteen (13); thence north  $30^{\circ}16'40''$  West 70.25 feet; thence North  $54^{\circ}17'10''$  West 416.42 feet; thence North  $34^{\circ}18'20''$  West 472.22 feet; thence North



29°05'20" West 240.05 feet; thence North 13°13'50" East 234.53 feet to a point on the north line of said Section thirteen (13), which point bears North 85°20'21" East 622.95 feet from the northwest section corner of said section thirteen (13); thence north 13°13'50" east 74.75 feet; thence North 21°36'20" west 264.07 feet; thence North 41°24'20" West 197.32 feet; thence North 28°20'00" West 219.54 feet; thence North 21°36'00" West 664.17 feet to the point of beginning [240]

The following described property situate in the County of Ferry, State of Washington, to-wit:

A tract of land containing 34.09 acres, more or less, being that portion of Lot two (2), Lot five (5) (formerly known as Lot 1) and Lot six (6) (formerly known as Lot 3), of section eleven (11), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, between the west line of the Columbia River and a line described as follows: Commencing at a point on the south line of Lot six (6) (formerly known as Lot 3) of said Section eleven (11), which point bears south 02°08'00" East 1320.68 feet and North 87°56'06" East 1977.31 feet from the quarter section corner on the west line of said section eleven (11); running thence North 05°26'30" East 493.38 feet; thence North 23°37'40" east 511.06 feet; thence south 44°39'00" East 309.36 feet;

thence north  $03^{\circ}30'50''$  East 255.82 feet; thence North  $10^{\circ}53'10''$  West 376.77 feet; thence north  $01^{\circ}36'10''$  east 250.34 feet; thence North  $38^{\circ}35'00''$  east 371.59 feet; thence south  $04^{\circ}28'10''$  east 608.63 feet; thence north  $12^{\circ}48'20''$  East 461.47 feet; thence North  $02^{\circ}12'10''$  East 375.15 feet; thence North  $63^{\circ}18'10''$  West 269.31 feet; thence North  $01^{\circ}32'00''$  east 628.77 feet; thence North  $08^{\circ}59'50''$  east 619.09 feet; thence North  $27^{\circ}46'00''$  West 217.77 feet; thence South  $81^{\circ}55'20''$  East 228.43 feet; thence North  $32^{\circ}15'00''$  East 383.24 feet; thence North  $56^{\circ}35'40''$  east 64.33 feet to a point on the north line of said section eleven (11), which point bears north  $87^{\circ}44'41''$  east 621.57 feet from the quarter section corner on the north line of said section eleven (11); excepting therefrom such rights of way as may have heretofore been deeded to the State of Washington for State Road No. 3 (sometimes known as the Inland Empire Highway).

Also that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated October 30, 1928, as set forth in Book 5 of Miscellaneous Deeds, at page 111. of the records of Ferry County, Washington, to erect, construct, reconstruct, and maintain a gaging station together with the necessary steel tower, anchors, cables, guys and ap-

purtenances over, along and across Lot six (6) of section twenty-two (22), Township thirty-six (36) north, range thirty-seven (37) East, Willamette Meridian;

Also, that certain easement given by Ben C. Camp, a bachelor, to the Washington Water Power Company, dated September 21, 1934, as set forth in Book 5 of Miscellaneous Records, at page 299 of the records of Ferry County, Washington, to erect, construct, reconstruct and maintain a gaging station together with the necessary appurtenances over, along and across Lot three (3) of section twenty-two (22), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian. [241]

### Tract No. 2

#### (Hummel Tract)

Also the following described property situate in the County of Stevens, State of Washington, to-wit:

A tract of land containing 21.27 acres, more or less, lying and being in the southeast quarter of the northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of section thirteen (13), Township thirty-six (36) North, Range thirty-seven (37) East, Willamette Meridian, more particularly described by metes and bounds as follows: Beginning at a point on the east line of the Southeast Quarter of the Northwest quarter ( $SE\frac{1}{4}NW\frac{1}{4}$ ) of said section thirteen (13), which point bears North

86°09'57" east 2568.16 feet and North 03°38'34" West 247.27 feet from the quarter section corner on the west line of said Section thirteen (13); running thence North 64°49'10" West 95.80 feet; thence North 74°52'50" West 393.47 feet; thence North 63°23'20" West 522.80 feet; thence North 33°14'50" West 307.77 feet; thence North 26°06'00" West 413.09 feet to the point of intersection with the north line of the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said section thirteen (13); thence north 85°45'25" East 1197.80 feet to the northeast corner of the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said section thirteen (13); thence south 03°38'34" East 1105.80 feet along the east line of the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said section thirteen (13) to the point of beginning. [242]

The said sum so deposited being allocated as follows, to-wit:

Tract No. 1 (The Washington Water	
Power Company tract)	\$7,950.35
Tract No. 2 (The Hummel tract)	241.35

and thereupon title in fee simple absolute vested in the United States of America, and said premises deemed to be condemned and taken for the use of the United States of America; and at the same time, the right of just compensation vested in the persons entitled thereto.



And it appearing to the Court that on September 24, 1941, by virtue of a stipulation between Lillian C. Hummell, the Washington Water Power Company, and the United States of America, this court entered a judgment in favor of Lillian C. Hummell, directing that the Clerk pay to the said Lillian C. Hummell the sum of \$241.35 which had theretofore been deposited into the registry of the court by the petitioner, the United States of America.

And it appearing to the Court that under the provisions of the said Act of February 26, 1931 (46 Stat., 1421) the defendants Stevens County, Washington, and Ferry County, Washington, became entitled to interest at the rate of 6% per annum on the amount finally awarded to them, from the date of taking until the date of payment;

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed that the award of the said jury to the defendants is the just and reasonable compensation to be allowed to the said defendants; and judgment shall be entered in favor of the Washington Water Power Company and against the United States of America in the sum of Seven Thousand Nine Hundred Fifty Dollars and thirty five cents (\$7950.35) without interest; and in favor of the defendant Stevens County, Washington, and against the United States of America in the sum of One Thousand Nine Hundred Seventy Dollars and seventy six cents (\$1970.76), with interest on said sum at the rate of six per cent per annum from December 9,



1939, until paid; and in favor of the defendant Ferry County, Washington, and against the United States of America in the sum of One Thousand Thirty Three Dollars and twenty cents (\$1033.20) with interest on [243] said sum at the rate of six per cent per annum from December 9, 1939 until paid.

It Is Further Ordered, Adjudged and Decreed that the defendants named in the Petition other than the defendants to whom the above named awards have been made have been duly served and have failed to appear, except City Bank Farmers Trust Company and Ralph E. Morton, as Trustee, both of whom have joined with the defendant, The Washington Water Power Company in the stipulation and have agreed that they have no interest in the premises involved in this action except under mortgage and deed of trust from The Washington Water Power Company and that they shall be bound by the stipulation to the same extent and in the same manner as The Washington Water Power Company. It is further adjudged and decreed that none of the defendants named in the petition, other than the above named trustees and those to whom awards have been made, had any right, title or interest in the said premises at the time of the taking by the United States, and that none of the defendants other than those to whom the above awards have been made shall have any right to share in the said awards except that the award

to The Washington Water Power Company may be paid to the said City Bank Farmers Trust Company and Ralph E. Morton, as Trustee, to apply on the mortgage or deed of trust if the attorneys for the said trustees and the said Washington Water Power Company shall so direct.

And It Is Further Ordered, Adjudged and Decreed that the above described property is condemned and that fee simple title thereto has vested in the United States of America free from liens and encumbrances.

The said defendants, The Washington Water Power Company, a corporation; City Bank Farmers Trust Company, a corporation; and Ralph E. Morton, as Trustee, having each requested the allowance of [244] an exception to the entry of this judgment, It Is Hereby Further Ordered that an exception is hereby granted to each of the defendants, The Washington Water Power Company, a corporation; City Bank Farmers Trust Company,

a corporation; and Ralph E. Morton as Trustee, to the entry of this judgment.

Done in Open Court this 14 day of March, 1942.

L. B. SCHWELLENBACH

United States District Judge.

Approved as to Form:

LYLE KEITH

United States Attorney.

B. E. STOUTEMYER

District Counsel, Bureau of Reclamation.

Attorneys for the United States  
of America.

POST, RUSSELL, DAVIS & PAINE

H. E. T. HERMAN

Attorneys for defendant Washington  
Water Power Company.

F. LEO GRINSTEAD

Attorney for Stevens County,  
Washington.

OSSEE W. NOBLE

Attorney for Ferry County,  
Washington.

[Endorsed]: Filed Mar. 14, 1942. A. A. LaFramboise, Clerk. [245]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS, NINTH CIRCUIT

Notice is hereby given that the defendants, The Washington Water Power Company, a corporation, the City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee, hereby appeal to the Circuit Court of Appeals, Ninth Circuit from the final judgment entered in this action on the 14th day of March, 1942.

POST, RUSSELL, DAVIS &  
PAINE

H. E. T. HERMAN

Attorneys for the defendants,  
The Washington Water Power  
Company, a corporation, the  
City Bank Farmers Trust  
Company, a corporation, and  
Ralph E. Morton, Trustee.  
622 Spokane Eastern Build-  
ing, Spokane, Washington.

[Endorsed]: Filed Mar. 30, 1942. A. A. LaFramboise, Clerk [246]

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[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents, That we, The Washington Water Power Company, a corporation; The City Bank Farmers Trust Company, a

corporation, and Ralph E. Morton, as Trustee, the defendants-appellants above named, as Principals, and the American Surety Company of New York, a corporation organized under the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto The United States of America, the petitioner-appellee above named in the just and full sum of Two Hundred and Fifty Dollars (\$250.00) for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of March, 1942.

The Condition of this obligation is such, that whereas, on the 14th day of March A.D. 1942, there was a judgment made and entered in the above entitled action and court in favor of the defendant-appellant, The Washington Water Power Company, a corporation, in the sum of Seven Thousand Nine Hundred and Fifty Dollars and Thirty-Five Cents (\$7,950.35), which sum according to the terms of said judgment may at the direction of the attorneys for the undersigned defendants-appellants be paid to the defendants-appellants, City Bank Farmers Trust Company, a corporation, and Ralph E. Morton as Trustee,

And Whereas, the above-named Principals, defendants-appellants above named, having filed with this bond in the office of the Clerk of the said Dis-



trict Court a Notice of Appeal from said judgment of said United States District Court for [247] the Eastern District of Washington, Northern Division to the Circuit Court of Appeals, Ninth Circuit,

Now, Therefore, if the said Principals, The Washington Water Power Company, a corporation, City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee, defendants-appellants shall pay to the United States of America, petitioner-appellee above named, all costs if the appeal is dismissed or the judgment affirmed, or such costs as the said Circuit Court of Appeals, Ninth Circuit may award if the judgment is modified, not exceeding the sum of Two Hundred and Fifty Dollars (\$250.00), then this obligation to be void; otherwise to remain in full force and effect.

THE WASHINGTON WATER  
POWER COMPANY,

A Corporation,

CITY BANK FARMERS  
TRUST COMPANY,

A Corporation,

RALPH E. MORTON,

As Trustee.

Principals.

By ALAN G. PAINE

POST, RUSSELL, DAVIS &  
PAINE

H. E. T. HERMAN

Attorneys for said above-named  
principals in the above en-  
titled cause.

AMERICAN SURETY COM-  
PANY OF NEW YORK,

By JOSEPH BAILEY.

(Seal) Attested to by:

G. E. NEVERS,

Resident Assistant Secretary.

[Endorsed]: Filed Mar. 30, 1942. A. A. LaFram-  
boise, Clerk. [248]

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[Title of District Court and Cause.]

CONCISE STATEMENT OF THE POINTS ON  
WHICH APPELLANTS INTEND TO  
RELY ON APPEAL

Come now the defendants-appellants, The Wash-  
ington Water Power Company, a corporation, the  
City Bank Farmers Trust Company, a corporation,  
and Ralph E. Morton, as Trustee, and hereby make  
this concise statement of the points on which they  
intend to rely on Appeal:

1. The learned trial Court erred in granting the  
motion of the petitioner for a directed verdict in  
the sum of \$7,950.35.

2. The learned trial Court erred in refusing to admit in evidence any testimony relative to the market value of the condemned lands for power site purposes.

3. The learned trial Court erred in rejecting each of the defendants' offers of proof.

4. The learned trial Court erred in refusing to give the instructions requested by the defendants.

POST, RUSSELL, DAVIS &  
PAINE

H. E. T. HERMAN

Attorneys for the defendants-appellants, The Washington Water Power Company, a corporation; the City Bank Farmers Trust Company, a corporation; and Ralph E. Morton, as Trustee.

Service of Copy of foregoing Concise Statement of the Points on Which Appellants Intend to Rely on Appeal admitted by receipt of copy thereof this 30th day of March, 1942.

LYLE KEITH

B. E. STOUTEMYER

Attorneys for Petitioner-Appellee.

[Endorsed]: Filed Mar. 30, 1942. A. A. LaFramboise, Clerk. [249]

[Title of District Court and Cause.]

ORDER DIRECTING TRANSMITTAL OF  
ORIGINAL EXHIBIT TO THE CIRCUIT  
COURT OF APPEALS

Whereas the defendants, The Washington Water Power Company, a corporation, City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee, have filed a notice of appeal from a judgment in the above-entitled action to the Circuit Court of Appeals for the Ninth Circuit.

And Whereas the said defendants have designated as part of the record on appeal a certain document entitled "Defendants' Identification No. 2."

And Whereas said defendants' said Identification No. 2 contains voluminous maps, diagrams, and other matter impracticable to print.

And Whereas the Court is of the opinion that said original document, Defendants' Identification No. 2, should be sent to the Circuit Court of Appeals for the Ninth Circuit in lieu of a copy thereof.

Now Therefore, It Is Ordered that the Clerk of this court be and he hereby is directed to forward to the Circuit Court of Appeals for the Ninth Circuit the original document, Defendants' Identification No. 2, as a part of the record in the above-entitled cause at the time he forwards said record; that said document shall be kept by the Clerk of the Circuit Court of Appeals until the Appeal is finally terminated and then be returned to the Clerk of this Court.

Done in Open Court this 30th day of March, 1942.

L. B. SCHWELLENBACH,  
Judge.

Presented by:

H. E. T. HERMAN.

Copy received this 30th day of March, 1942.

LYLE KEITH,

B. E. STOUTEMYER,

Attorneys for Petitioner-Appellee.

[Endorsed]: Filed Mar. 30, 1932. A. A. LaFramboise, Clerk. [250]

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[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD  
TO CONSTITUTE RECORD ON APPEAL

Comes now those defendants-appellants, The Washington Water Power Company, a corporation, the City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee, and hereby designate the portions of the record, proceedings, and evidence to be contained in the record on appeal in the above-entitled cause, to-wit:

1. Petition for condemnation.
2. Declaration of Taking.
3. Judgment on Declaration of Taking.
4. Stipulation dated July 2, 1941 between attorneys for petitioner and attorneys for The Washington Water Power Company, the City Bank Farmers Trust Company, and Ralph E. Morton, as Trustee, Defendants.



5. Stipulation dated August 21, 1941 between the United States Attorney and Assistant United States Attorney and Attorneys for The Washington Water Power Company.

6. Judgment on Stipulation re Hummel Tract.

7. Transcript of Evidence and Proceedings (including oral opinion of the Court) omitting therefrom the following items:

(a) Pages 5 to 23, consisting of the testimony of the witnesses W. R. Hall, Chester A. Hills, Miriam Miller, and L. J. O'Connell who testified to tax matters on behalf of the defendants Ferry and Stevens Counties.

(b) The Stipulation dated July 2, 1941, which appears as Item 4 herein above.

(c) The Stipulation dated August 21, 1941, which appears as Item 5 herein above.

8. Plaintiff's Exhibit "A"

9. Defendants' Identification No. 1

10. Defendants' Identification No. 2

11. Defendants' Identification No. 3

12. Defendants' Identification No. 4

13. Defendants' Identification No. 5 [251]

14. Defendants' Identification No. 6

15. Defendants' Identification No. 7

16. Proposed Instructions submitted by Defendant, The Washington Water Power Company.

17. Verdict of the Jury as to defendant, The Washington Water Power Company.

18. Judgment.

19. Notice of Appeal.
20. Bond on Appeal.
21. Statement of points upon which Appellants intend to rely upon appeal.
22. Designation of Portions of record to constitute record on appeal.
23. Order directing Defendants' Identification No. 2 to be sent to the Circuit Court of Appeals.

POST, RUSSELL, DAVIS &  
PAINE

H. E. T. HERMAN

Attorneys for the defendants-appellants, The Washington Water Power Company, a corporation, the City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee.

622 Spokane & Eastern Building, Spokane, Washington.

Received copy this 30th day of March, 1942.

LYLE KEITH

B. E. STOUTEMYER

Attorneys for Petitioner-Appellee. [252]

[Title of District Court and Cause.]

DESIGNATION OF RECORD BY PETITIONER-APPELLEE AND CROSS-APPELLANT, UNITED STATES OF AMERICA, OF ADDITIONAL PORTIONS OF RECORD TO COMPLETE RECORD ON APPEAL

Comes now the petitioner-appellee and cross-appellant, United States of America, and hereby designates the following additional portions of the record, proceedings, and evidence to be contained in the record on appeal in the above entitled cause, the said additional portions thereof to be in addition to those heretofore designated by the defendants-Appellants, Washington Water Power Company, City Bank Farmers Trust Company, and Ralph E. Morton, Trustee:

1. All that part of the record, proceedings, and evidence in the above entitled cause not designated by the said defendants-appellants, Washington Water Power Company, City Bank Farmers Trust Company, and Ralph E. Morton, Trustee, the additional portions of the record to include the following:

(a) The entire transcript of the evidence and proceedings, including in question and answer form the testimony of the witnesses W. R. Hall, Chester A. Hills, Miriam Miller, and L. J. O'Connell.

(b) All exhibits in the above entitled cause of action.

(c) The proposed instructions submitted by the petitioner, United States of America, and petitioner's exceptions to refusal of the Court to give such instructions.

(d) The Court's instructions to the jury in full, and petitioner's exceptions to portions thereof.

(e) The entire verdict or verdicts of the jury, including the portions thereof applicable to the awards to Ferry and Stevens counties.

(f) The notice of appeal or cross-appeal by the petitioner-appellee and cross-appellant, United States of America.

(g) The statement of points upon which the cross-appellant, United States of America, intends to rely upon its appeal or cross-appeal herein.

(h) Petitioner's motion for a new trial herein and the order of the Court overruling petitioner's motion for a new trial. [253]

(i) This designation of additional portions of the record to complete the record on appeal.

/s/ LYLE KEITH

/s/ B. E. STOUTEMYER

Attorneys for Petitioner-Appellee and Cross-Appellant,  
United States of America.

[Endorsed]: Filed Apr. 9, 1942. A. A. LaFramboise, Clerk. [254]

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD

United States of America

Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing type-written pages numbered 1 to 254 inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals as called for by Appellant's Designation of Portions of Record to Constitute Record on Appeal, and Appellee's Designation of Record of additional portions of record to complete Record on Appeal (except "Notice of Appeal or cross-appeal by the petitioner-appellee and cross-appellant," and "Statement of points upon which the cross-appellant intends to rely upon its appeal or cross-appeal," these documents never having been filed with the Clerk of the District Court), as the same remain on file and of record in the office of the Clerk of said District Court, and that the same constitutes the record on appeal of Washington Water Power Company, City Bank Farmers Trust Company, and Ralph E. Morton, Trustee, from the final judgment of the District Court of the United States for the Eastern District of Washington to the United States Cir-



cuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, California.

I further certify that I herewith transmit to the Circuit Court of Appeals, original document marked "Defendant's Identification No. 2," as provided by Order of this Court dated March 30, 1942.

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing record amount to the sum of \$36.75 and that the same has been paid in full by Post, Russell, Davis & Paine, [255] of attorneys for defendant-appellant.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid District Court, this 1st day of May, 1942.

(Seal)

A. A. LaFRAMBOISE

Clerk of the United States District Court for the Eastern District of Washington. [256]

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[Title of District Court and Cause.]

PLAINTIFF'S AND CROSS-APPELLANT'S  
NOTICE OF APPEAL

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that part of the final judgment entered in this action on March 14th 1942, wherein the plaintiff is required to pay to the defendant Stevens

County, Washington the sum of \$1,970.76 and to the defendant Ferry County, Washington the sum of \$1,033.20 in settlement of alleged tax liens claimed by said defendants, and from that part of said final judgment wherein the plaintiff is required to pay to the defendant Washington Water Power Company the full stipulated value of the property taken, to wit, the sum of \$7,950.35 without deducting therefrom the \$3,003.96 so required to be paid in settlement of the said tax liens.

/s/ NORMAN M. LITTELL

/s/ B. E. STOUTEMYER

/s/ EDWARD M. CONNELLY

Attorneys for Plaintiff and  
Cross-Appellant, United  
States of America.

[Endorsed]: Filed May 15, 1942. A. A. LaFramboise, Clerk. [257]

[Title of District Court.]

UNITED STATES OF AMERICA,

Petitioner-Appellee  
and Cross-Appellant,

v.

THE WASHINGTON WATER POWER

COMPANY, a corporation, et al.,

Defendants,

THE WASHINGTON WATER POWER

COMPANY, a corporation; CITY BANK

FARMERS TRUST COMPANY, a corpora-

tion; and RALPH E. MORTON, as Trustee,

Defendants-Appellants

and Cross-Appellees.

CONCISE STATEMENT OF THE POINTS ON

WHICH CROSS-APPELLANTS INTEND

TO RELY ON APPEAL

Comes now the petitioner-cross-appellant, the United States of America, and hereby makes this concise statement of the points on which it intends to rely on its cross-appeal:

1. The trial Court erred in directing the jury to bring in a verdict requiring the plaintiff to pay to the defendants Stevens County and Ferry County alleged tax liens in the aggregate amount of \$3,003.96 in addition to paying to the defendant Washington Water Power Company the stipulated reasonable value of the property.

2. The trial Court erred in directing the jury to bring in a verdict requiring the plaintiff to pay to the Washington Water Power Company the stipulated reasonable value of the property taken, to-wit, the sum of \$7,950.35, without deducting therefrom the amount of the tax liens required to be paid to Stevens County and Ferry County. [258]

3. The trial Court erred in directing a verdict that requires the plaintiff to pay \$3,003.96 more than the fair market value of the property taken.

4. The trial Court erred in refusing the plaintiff's requested Instructions Nos. 1, 2 and 3.

5. The trial Court erred in overruling the plaintiff's motion for a new trial.

/s/ NORMAN M. LITTELL

/s/ B. E. STOUTEMYER

/s/ EDWARD M. CONNELLY

Attorneys for Petitioner-Appel-  
lee and Cross-Appellant,  
United States of America.

[Endorsed]: Filed May 15, 1942. A. A. LaFramboise, Clerk. [259]

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United States of America,  
Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the United States District Court in and for the Eastern District of Washington, do hereby certify that the annexed and foregoing is a true, full and complete copy of the original Plaintiff's and Cross-Appellants Notice of Appeal, and Concise Statement of the Points on

which Cross-Appellants intend to rely on Appeal in Cause No. 52, United States of America, Plaintiff, vs. Washington Water Power Company, et al., as the same remains on file and of record in the office of the Clerk of the said District Court, and that the same constitutes that portion of the record on appeal as called for in the Designation of Record by Petitioner-Appellee and Cross-Appellant, United States of America of additional portions of record to complete record on appeal, and omitted from the Transcript on Appeal in this cause forwarded to the Clerk of the United States Circuit Court of Appeals at San Francisco, California on the 1st day of May, 1942, because said instruments had not been filed on that date.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court, at Spokane this 15th day of May, A. D., 1942.

(Seal)

A. A. LaFRAMBOISE

Clerk, United States District  
Court, Eastern District of  
Washington. [260]

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[Endorsed]: No. 10127. United States Circuit Court of Appeals for the Ninth Circuit. The Washington Water Power Company, a corporation, The City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee, Appellants, vs. United States of America, Appellee. And United States of America, Appellant, vs. The Washington Water Power Company, a corporation, The City



Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee, Appellees. Transcript of Record. Upon Appeals from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed May 4, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

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In the United States Circuit Court of Appeals for  
The Ninth Circuit.

No. 10127

THE WASHINGTON WATER POWER  
COMPANY, a corporation; CITY BANK  
FARMERS TRUST COMPANY, a corporation; and RALPH E. MORTON, as  
Trustee,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

CONCISE STATEMENT OF POINTS UPON  
WHICH APPELLANTS INTEND TO  
RELY AND DESIGNATION UNDER  
RULE NINETEEN  
(C. C. A. 9)

Come now the appellants, The Washington Water Power Company, a corporation, the City Bank Farmers Trust Company, a corporation, and Ralph

E. Morton, as Trustee, and hereby make this concise statement of the points on which they intend to rely on Appeal:

1. The learned trial Court erred in granting the motion of the petitioner for a directed verdict in the sum of \$7,950.35.

2. The learned trial Court erred in refusing to admit in evidence any testimony relative to the market value of the condemned lands for power site purposes.

3. The learned trial Court erred in rejecting each of the defendants' offers of proof.

4. The learned trial Court erred in refusing to give the instructions requested by the defendants.

In accordance with subdivision 6 of Rule 19 of the United States Circuit Court of Appeals for the Ninth Circuit, the said appellants do hereby designate the following portion of the transcript of record which they think necessary for the consideration of the above enumerated points and request such portions of the record be printed, to-wit:

\* \* \* \* \*

ALAN G. PAINE

H. E. T. HERMAN

Attorneys for the appellants,  
The Washington Water Power  
Company, a corporation; the  
City Bank Farmers Trust  
Company, a corporation, and  
Ralph E. Morton, as Trustee.  
622 Spokane & Eastern Build-  
ing, Spokane, Washington.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION TO BE RELIEVED FROM  
PRINTING OR REPRODUCING DE-  
FENDANTS' IDENTIFICATION No. 2

Come now the appellants, The Washington Water Power Company, a corporation, City Bank Farmers Trust Company, a corporation, and Ralph E. Morton, as Trustee, and apply to the Circuit Court of Appeals for the Ninth Circuit for an order dispensing with the reproduction or printing of defendants' Identification No. 2 in the above entitled cause, and ask the Court that defendants' Identification No. 2 be considered by the Court in its original form without reproduction.

The reason for this application is that said defendants' Identification No. 2 is in such form that it is impracticable to copy the same as part of the record to be transmitted to the Circuit Court of Appeals for the Ninth Circuit. The said defendants' Identification No. 2 is in book volume form and contains approximately 175 pages, a large part of which pages are in the form of graphs, photographs, drawings of maps and mechanical designs and many of the pages of said book are so large that they have to be folded a number of times to be properly contained within said volume.

This application is based upon affidavit of Mr. Alan G. Paine hereto attached.

ALAN G. PAINE

H. E. T. HERMAN

Attorneys for appellants, The Washington Water Power Company, a corporation, City Bank Farmers Trust Company, a corporation, Ralph E. Morton, Trustee.

Approved.

R. E. STOUTEMYER

EDWARD M. CONNELLY

N. B. Atty. & Attorneys for Appellee.

State of Washington,  
County of Spokane—ss.

Alan G. Paine, being first duly sworn on oath, deposes and says:

I am one of the attorneys for the above-named appellants. This affidavit is made in support of the Application for an order relieving said appellants from printing or reproducing defendants' Identification No. 2, the original of which has been sent to this Honorable Court by virtue of an order made and entered by the Honorable Lewis B. Schwellenbach, Judge of the United States District Court for the Eastern District of Washington, Northern Division. I have read said Application and the matters, allegations and things therein set forth are true.

ALAN G. PAINE

Subscribed and sworn to before me this 30 day of April, 1942.

(Seal)

M. J. SICKAFOOSE

Notary Public residing at Spokane, Washington

So ordered:

CURTIS D. WILBUR

Senior United States Circuit Judge

[Endorsed]: Filed May 4, 1942.